TAB I

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Consolidated Application for Authority to	)	
Provide In-Region, InterLATA Services in	)	WC Docket No. 02-148
Colorado, Idaho, Iowa, Nebraska and North	)	
Dakota.	)	

DECLARATION OF JOHN F. FINNEGAN ON
<u>PERFORMANCE DATA AND ASSURANCE PLANS</u>

July 3, 2002

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DECLARATION OF JOHN F. FINNEGAN ON
PERFORMANCE DATA AND ASSURANCE PLANS

1. My name is John F. Finnegan, and I am a Senior Policy Witness employed by AT&T. My business address is 1875 Lawrence Street, Suite 1500, Denver, Colorado 80202.

2. My education and relevant work experience are as follows. I have a B.S. in Engineering from Rutgers College of Engineering and an M.B.A. from the University of Denver. I have worked for AT&T for 18 years. After graduating from Rutgers, I spent the next two years with Combustion Engineering in Valley Forge, PA as a Project Engineer. In 1983, I joined AT&T as a purchased product engineer. Over the next 12 years, I spent time with AT&T in a variety of engineering, quality management, sales and marketing positions. Almost half of that time was spent leading a supplier quality management organization.

3. In 1995, I joined the New Markets Development Organization, (the immediate predecessor of the Western Region Local Services Organization) and was one of the first employees in the Western Region to explore the opportunities associated with providing local exchange services. In 1996, I began in my current position. Recently, I have concentrated my work efforts on collaborating with Qwest, CLECs and state regulators on understanding and evaluating Qwest's operational support system ("OSS"). In fact, I have been AT&T's

representative in the Arizona and the Regional Oversight Committee's ("ROC") OSS tests since their inception. I am a frequent panelist on ROC OSS discussions, and have testified in State 271 proceedings in Colorado, Washington, North Dakota, South Dakota, Nebraska, Oregon, and New Mexico.

I. PURPOSE AND SUMMARY OF DECLARATION

4. The purpose of this declaration is to respond to Qwest's allegations that: (1) its performance data are accurate and reliable and demonstrate nondiscriminatory performance; and (2) its performance assurance plans will prevent any backsliding in the wake of Section 271 relief. Plainly, Qwest has not met and cannot meet its burden of proof on these issues despite the claims of its witnesses.

5. First, as described in Part II, Qwest's data are not accurate, complete or reliable. Although Qwest maintains that the accuracy of its data has been confirmed by the Performance Measurement Audit conducted by the Liberty Consulting Group ("Liberty PMA"), Liberty's separate data reconciliation, the data reconciliation conducted by KPMG during the ROC OSS test, and the Performance Measurement Audit conducted by Cap Gemini Ernest & Young ("CGE&Y PMA"), its reliance on these audits and processes is misplaced.

6. During the Liberty PMA, Liberty never verified the accuracy of Qwest's raw data inputs. During that audit, Liberty conducted the audit based on the assumption that Qwest's raw data inputs were accurate and evaluated whether Qwest properly adhered to the Performance Indicator Definitions ("PIDS") when calculating performance results from the raw data. As a consequence, the Liberty PMA audit cannot and does not demonstrate that Qwest's reported performance results are somehow trustworthy.

7. Qwest's attempt to seek refuge in the Liberty data reconciliation is equally unavailing. The Liberty data reconciliation was extremely limited in geographical, product, measurement and temporal scope. Liberty's study involved an examination of data provided by three CLECs from only two of the states (Nebraska and Colorado) that are the subject of Qwest's Application. Only seven measures covering three products were examined during this process. Further, the data reviewed were, in large measure, generated from January through June 2001. Given the numerous restrictions and limitations in the Liberty data reconciliation process, that study cannot reasonably be deemed to constitute a rigorous and comprehensive analysis of the accuracy of Qwest's performance data.

8. Even leaving aside these limitations in the scope of Liberty's analysis, the Liberty data reconciliation is plainly inadequate to establish the completeness, accuracy and reliability of Qwest's performance data. Liberty's study suffers from serious procedural and substantive flaws. The study objective inappropriately placed the burden on CLECs to prove that Qwest's data were inaccurate. Furthermore, the data reconciliation is substantively flawed because Liberty failed to resolve conflicting interpretations of the parties regarding performance measurement issues and closed observations and exceptions without confirming whether Qwest had actually eliminated the errors in its performance monitoring and reporting processes. However, even Liberty's flawed study reveals that Qwest's performance monitoring and reporting processes are error-ridden.

9. The KPMG data reconciliation during the ROC OSS test also lends no support to Qwest's claims of data accuracy. During that process, KPMG was unable to determine whether Qwest satisfied numerous test criteria. Indeed, in many instances, because the test criteria were governed by diagnostic measures which have no performance standards, KPMG calculated performance results without reaching any decisions as to whether Qwest passed the test criteria. KPMG was also unable to reach other findings because of insufficient information or because Qwest refused to be subjected to additional testing. In all events, even the limited KPMG data

reconciliation process revealed that Qwest's excessive reliance on manual processing is at the root cause of numerous errors in its performance monitoring and reporting processes.

10. The CGE&Y PMA conducted during the Arizona third party OSS test is equally insufficient to prove the accuracy and reliability of Qwest's data. Just as the Liberty PMA, the CGE&Y PMA did not test the accuracy of Qwest's raw data. The CGE&Y PMA relied on an assumption that Qwest's input data were accurate and determined whether Qwest properly complied with the PIDS when calculating performance results. The Arizona Master Test Plan ("MTP") and Test Standards Document ("TSD") contemplated that the accuracy of Qwest's raw data would be assessed by comparing Qwest's raw data to that collected from the Pseudo-CLEC during Functionality and Capacity testing. However, CGE&Y's ability to evaluate the accuracy of Qwest's input data was fatally compromised by the failure of the testers to obtain all of the data from the Pseudo-CLEC during those tests.

11. Second, as described in Part III, the performance measurement plans on which Qwest relies to support its Application are incomplete. Qwest's current PIDs do not include measures that are important in assessing performance. Because Qwest's current PIDs glaringly omit a measure on service order accuracy, as well as other measures, important aspects of its performance are not being evaluated. Moreover, Qwest's attempts to rely on its own internal service order accuracy audit and the measure on installation troubles as proof of its performance should be rejected. The former is a highly partisan, unaudited, unsupported analysis and the latter is not a suitable surrogate for an appropriate measurement of Qwest's service order accuracy.

12. Third, Part IV explains that, even Qwest's own inadequate commercial data, coupled with the KPMG OSS test, show that it has not met its statutory obligations. The pool of evidence shows that Qwest has unacceptably high rejection rates and unacceptably low flow-through rates that increase the risks of delays and errors in the provisioning process. The weight of data also shows that Qwest fails to issue status notices in a timely manner, fails to provision

CLEC orders at parity with its retail orders, and discriminates against CLECs in the maintenance and repair and billing processes.

13. Invariably, when confronted with its own performance data showing performance failures, Qwest offers a host of rationalizations or resorts to promises to show that improved future performance should be fully expected. These excuses, however, are internally inconsistent, baseless, and self-serving. And, in all events, Qwest's unfulfilled promises of future compliance have no probative value in the context of this proceeding.

14. Fourth, Part V explains that the Performance Assurance Plans ("PAPs") on which Qwest relies cannot serve to deter backsliding in the wake of any Section 271 relief. Where, as here, the evidence shows that Qwest's performance data are unreliable and metrics that are important to competitive entry are omitted from its plans, the entire performance enforcement scheme is fatally compromised. For this reason, the performance remedy plans in every State included in Qwest's Application cannot serve as effective deterrents against anticompetitive conduct. But even if Qwest's performance data were somehow reliable and comprehensive -- and they are not – structural defects in these plans render them wholly inadequate to assure future statutory compliance.

15. The Idaho QPAP effectively precludes CLECs from pursuing remedies outside the plan for Qwest's poor performance -- remedies that this Commission has recognized are essential to assuring future statutory compliance. Furthermore, in the Iowa QPAP, Qwest has expressly reserved the right to challenge the very authority of the State to make any changes to the plan which are not to its liking. Qwest's reservation of such rights not only highlights the fragility of its claim that its remedy plan will not unreasonably open the door to protracted litigation, but also poses the significant threat that the plan will be nothing more than a static document that will never reflect the dynamism in the telecommunications market.

16. For all of these reasons, Qwest has not satisfied and cannot satisfy its burden of proving that its performance data are accurate and show checklist compliance, and that its performance enforcement plans meet the public interest standards under Section 271.

II. QWEST'S PERFORMANCE DATA ARE NOT TRUSTWORTHY.

17. On the basis of the current record, Qwest cannot meet its burden of demonstrating that its data are "meaningful, accurate and reproducible," a fundamental showing in all prior approved 271 applications. *Texas 271 Order* ¶ 428; *Kansas/Oklahoma 271 Order* ¶ 278. Qwest contends that "the Commission may confidently rely on Qwest's commercial performance reports for four reasons. First, Qwest states that, during an audit of Qwest's performance under the Performance Indicator Definitions ("PIDS"), Liberty found that Qwest's data accurately capture its actual performance. Williams Decl. ¶ 8 (footnote omitted). Second, Qwest contends that, during a separate data reconciliation process, Liberty once again found that Qwest's performance data results are reliable. *Id.* ¶ 10 (footnote omitted). Third, Qwest maintains that, during another data reconciliation process, KPMG verified the accuracy of Qwest's data. *Id.* ¶ 54, n 37. Fourth, Qwest asserts that the CGE&Y PMA also concluded that Qwest's data are reliable. Williams Decl. ¶ 9 (footnote omitted). Qwest is wrong on all counts.

A. The Liberty PMA Did Not Validate the Accuracy of Qwest's Data.

18. Qwest contends that the Liberty PMA, which culminated in the issuance of a final report on September 25, 2001, confirmed that "'the audited performance measures accurately and reliably report actual Qwest performance.'" Qwest Br. at 22 (footnote omitted). Qwest's reliance on the Liberty PMA to demonstrate the reliability of its performance data is misplaced.

19. The Regional Oversight Committee ("ROC"), which is comprised of thirteen of the fourteen states[1] in the Qwest region, requested Liberty to perform an audit of the metrics used to calculate Qwest's performance results. Liberty's Final Report on the Audit of Qwest's Performance Measures ("Liberty PMA Report") states that the Liberty PMA was designed to[2]:

- validate that Qwest's measurement of performance is in the manner prescribed by the Performance Indicator Definition (PID) and is reliable;
- compare and assess retail and wholesale operations processes in areas material to serving CLECs, and
- verify that, where required, comparable wholesale and retail processes will by nature of their design and operation provide service at parity.

20. During this audit, Liberty purportedly reviewed Qwest's performance data collection and processes, analyzed sample data sets to assess whether Qwest's performance data collection and monitoring processes functioned as designed, and independently calculated "performance measures to corroborate the adequacy of the processes that measure performance against explicit standards and measures." *Id.* at 1. In broadly describing the Liberty PMA, as well as the other audits and data reconciliation processes on which it relies in its Application, Qwest contends that this audit "confirm[ed] the accuracy of the inputs (transaction raw data) to Qwest's performance reports." Williams Decl. ¶ 12. The Liberty PMA did nothing of the sort.

21. During the Liberty PMA, Liberty <u>assumed</u> that Qwest's input raw data were accurate.[3] Starting from that basic assumption, Liberty then assessed whether Qwest properly converted its input data into PID-compliant performance results. Thus, for example, if Qwest's input data showed that an order was missed for customer reasons, Liberty confirmed whether

[1] Arizona did not participate in the ROC.

[2] Liberty PMA Report at 1.

[3] *See, e.g.*, Qwest Section 271, Arizona OSS Report Workshop 5, Docket T-00000A-97-0238, December 13, 2001 at 265 (Stright) (Liberty) (agreeing that "[f]or the most part" Liberty did not "validate the accuracy of the input data").

Qwest processed an order with a customer-caused miss in accordance with PID requirements. However, Liberty did not verify whether, in the first instance, the order actually was missed for customer reasons.

22. Similarly, if the input data supplied by Qwest included an order populated with a field denoting that the order should be excluded from PID results, Liberty determined whether the order was, in fact, omitted from performance results. However, Liberty did not assess whether the service order should have been populated with a field specifying order exclusion. As a consequence, the Liberty PMA cannot fairly be characterized as dispositive proof regarding the integrity of Qwest's input raw data.

23. Indeed, verification of the accuracy of reported performance results requires a comprehensive evaluation of all elements in the data collection, monitoring and reporting processing streams. That examination necessarily involves an assessment of the accuracy of the input raw data, as well as an assessment of a BOC's ability to apply correctly the calculations, formulas, and exclusions defined within the PIDs when calculating performance results based upon those data. The Liberty PMA accomplished the latter, not the former.

24. When Liberty issued its final report on the PMA, a number of CLECs expressed concerns about the accuracy of Qwest's performance data.[4] As a result, the ROC directed Liberty to conduct a data reconciliation. As discussed in more detail below, the Liberty data reconciliation confirmed that the CLECs' concerns about the accuracy of Qwest's data were plainly warranted.

[4] Liberty Report on Qwest Performance Measure Data Reconciliation, April 16, 2002 ("Liberty Data Reconciliation Report") at 2, Qwest Appendix D, Attachment 5.

B. The Liberty Data Reconciliation Process Did Not Validate the Accuracy of Qwest's Data.

25. Shrouding itself in the Liberty data reconciliation report, Qwest asserts that that report "is further evidence that its data are reliable." Qwest Br. at 23. Although Liberty ultimately found that Qwest's data are accurate, Liberty's finding is fundamentally flawed.

26. Contrary to Qwest's claims, Liberty's data reconciliation cannot reasonably be relied upon by this Commission as evidence that Qwest's performance data are complete, accurate and reliable. Any notion that Liberty's data reconciliation somehow validated the accuracy of Qwest's performance data is belied by: (1) Liberty's own description of the limited scope of its work; (2) a fundamentally flawed study objective that inappropriately shifted the burden of proof to CLECs; (3) Liberty's failure to resolve conflicts between the parties regarding the appropriate manner in which Qwest's performance should be captured; (4) the lack of military style testing that caused Liberty to close observations and exceptions prematurely before verifying that errors had been corrected; and (5) the failure of Liberty to issue an exception or observation for clear deficiencies in Qwest's performance data. However, even Liberty's deficient data reconciliation exposed numerous problems in Qwest's performance monitoring and reporting processes.

1. Limitation in Scope

27. The Liberty data reconciliation, in which AT&T, WorldCom, and Covad participated, was extremely limited in scope. By Liberty's own admission, "[t]he scope of the study did not include the entire matrix of the three CLECs and all measures, states and products."[5] Indeed, the only data examined during this study were those from Arizona, Colorado, Nebraska, Washington, Oregon, Utah and Minnesota.[6] Thus, no data were examined from three of the states that are included in Qwest's application (*i.e.* Idaho, Iowa and North Dakota).

[5] Liberty Data Reconciliation Report at 2.

[6] Liberty Data Reconciliation Report at 5.

28. Additionally, the Liberty data reconciliation process was not a comprehensive analysis of all performance measures. Liberty's analysis was limited to data for the following seven measures (*id.* at 5): (1) PO-5-Firm Order Confirmations On Time; (2) OP-3 Installation Commitments Met; (3) OP-4 Installation Interval; (4) OP-6-Delayed Days; (5) OP-13-Coordinated Cuts on Unbundled Loop; (6) OP-15-Interval for Pending Orders Delayed Past Due Date; and (7) MR-6-Mean Time to Restore. As a result, the Liberty data reconciliation process did not examine data on flow-through, rejection intervals, jeopardy notice timeliness, repair repeat rates, work completion notification timeliness, billing completion notification timeliness or other measures that are important to competitive entry.

29. Notably, in its Application, Qwest identifies 13 so-called "central performance metrics" in the PIDs. Williams Decl. ¶ 19. Qwest's list is, by no means, a comprehensive listing of all performance metrics which are important to competitive entry. Even taking Qwest's list at face value, Liberty's data reconciliation involved an examination of data for only five of Qwest's 13 "central performance metrics."[7] Additionally, Liberty's study did not even involve a comprehensive examination of all data for the handful of measures that were included in the study. As Liberty concedes in its final report, its assessment of MR-6 "was not a complete reconciliation, but rather an examination of particular trouble tickets for which AT&T's and Qwest's records matched." *Id.* at 7.

30. The Liberty data reconciliation process was also limited in product scope. The data examination covered only three products (*i.e.* line sharing, unbundled loops, and LIS trunks).

[7] The Liberty data reconciliation process did not examine data for the following measures that are included in Qwest's list of "central performance metrics:" (1) GA-1 through GA-6: Gateway Availability; (2) OP-5: New Service Installation Quality; (3) MR-3: Out of Service Cleared within 24-hours; (4) MR-4: All Troubles Cleared Within 48-Hours; (5) MR-5: All Troubles Cleared Within 4 Hours; (6) MR-7: Repair Repeat Report Rate; (7) MR-8: Trouble Rate; and (8) MR-9: Repair Appointments Met.

Id. at 66. And, in some instances, Liberty examined data for only one or two products for individual CLECs. *Id.* at 6.[8]

31. The data reconciliation process was also limited as to temporal scope. During the data reconciliation process Liberty reviewed data which were generated from January to June 2001.[9] Even Liberty emphasized in its report that "[t]his is particularly noteworthy for certain of the OP measures because Qwest made significant changes to its methods for calculating OP-3, -4, -6, and –15 with the release of PID 4.0 in the second half of 2001." *Id.* at 6 (emphasis added).

32. In fact, when it otherwise suits its purposes, Qwest contends that audit determinations based upon aged data – – "orders between 9-12 months ago suggests that these results are not significant and outdated." Notarianni/Doherty Decl. ¶ 350 (dismissing the significance of a "not satisfied" finding during KPMG's OSS test). Similarly, Qwest argues, in other contexts, that audit findings rendered before the implementation of substantial system changes serve no useful purpose. *Id.* If Qwest's arguments are taken to their logical conclusion, the Liberty data reconciliation process has no probative value because: (1) the data reconciliation involved an examination of data that are, in some instances, over one year old; and (2) the examination was conducted before Qwest made substantial changes to its methodology for calculating performance results. In all events, given the numerous limitations of the Liberty data reconciliation process, it cannot reasonably be relied upon as incontrovertible evidence that Qwest's performance data are accurate.

[8] For example, only AT&T LIS trunk data were examined during the Utah evaluation. The examination of Covad's data was limited to unbundled loop and line sharing data. Liberty Data Reconciliation Report at 6, Qwest Appendix D, Attachment 5.

[9] *Id.* (noting that "[t]he timeframe from the data that were reconciled was the first half of 2001").

2. **Study Objective**

33. The Liberty audit is also fundamentally infirm because of a critical defect in its stated study objective which inappropriately shifted the burden of proof to the CLECs. Qwest cannot establish that CLEC access to its operations support systems is nondiscriminatory by asserting or promising that it will be so. Qwest must *demonstrate* that nondiscriminatory access is actually being delivered to CLECs. Moreover, Qwest bears the burden of establishing that each and every requirement of Section 271, including the obligation to provide services and facilities to CLECs in a nondiscriminatory manner, has been satisfied.[10]

34. Critically, Liberty describes the objective of the data reconciliation process as follows:[11]

> Liberty conducted multiple discussions with state commission personnel, Qwest, and CLECs in order to secure their comments on the scope and objectives for this test. Liberty determined that the objective for the data reconciliation process solicited by the ROC should be to answer the following question:
>
>> Does any of the information provided by the participating CLECs demonstrate inaccuracy in Qwest's reporting of performance results under the measures defined in the PID?

35. AT&T strenuously objected to Liberty's stated objective because it placed the burden on the CLECs to identify discrepancies in Qwest's data and prove that Qwest's data are inaccurate. In its report, Liberty contends that "any arguments related to improper study

[10] *See, e.g., Michigan 271 Order*, ¶ 43 ("the ultimate burden of proof with respect to factual issues remains at all time with the BOC"), ¶ 158 (the BOC "has the burden of demonstrating that it has met all of the requirements of section 271"); *Connecticut 271 Order*, App. D-3, ¶ 5 (stating that "[t]he BOC at all times bears the burden of proof of compliance with Section 271, even if no party challenges its compliance with a particular requirement") (footnote omitted); *New York 271 Order*, ¶ 47 (same).

[11] Liberty Data Reconciliation Report at 3, Qwest Appendix D, Attachment 5.

objective should be brushed aside" because some problems regarding the accuracy of Qwest's data "were discovered through examining information completely independent of data provided by CLECs, or through direct admissions by Qwest." *Id.* at 4. It is certainly true that, during the data reconciliation process, Liberty obtained information and data from Qwest and the CLECs. However, Liberty's study objective suggests that any *finding* of inaccuracy rested squarely upon affirmative proof provided by the CLECs. This shift in the burden of proof is wholly inappropriate and contrary to this Commission's precedent which emphasizes that the BOC bears the burden of proof at all times when proving statutory compliance.

3. Failure to Render Conclusion

36. Liberty's data reconciliation process suffers from other deficiencies which underscore that it cannot properly be considered as a reliable indicator of data accuracy. In its final report on the data reconciliation process, Liberty conceded that, when the CLECs and Qwest "interpreted requirements differently," it made no effort to render an opinion regarding the propriety of such interpretations, stating (*id.*):

> For example, Liberty was not required to determine whether CLECs could produce Qwest's performance results with their own information, or what changes would be required to allow such recreation. There were also situations in which Liberty found that Qwest and a CLEC interpreted requirements differently or had different understandings of how interactions with Qwest on the information results from them should be treated. In those cases, Liberty did not seek to determine who was right and who was wrong, or who represented the better practices. Indeed, Liberty's goal was to determine whether in consideration of the requirements of the PID...Qwest's methods practices, or processes contained material error. Therefore, in the case of data discrepancies, Liberty requested an affirmative showing of a Qwest error or omission before issuing an exception or observation.

37. This admission is nothing short of remarkable. The Liberty data reconciliation process revealed significant discrepancies between Qwest's and the CLECs' interpretations regarding the manner in which Qwest's performance should be captured in performance results. Moreover, in those instances where the PID was silent or sufficiently unclear so that both parties' positions might arguably fall within the ambit of the PID definition, Liberty should have grappled with these issues and rendered a decision. Liberty's refusal to render findings to resolve these conflicts is an important gap in its analysis. What remains unclear is precisely why Liberty chose to take such an approach. Thus, it is unclear whether Liberty refrained from reaching findings on the conflicting interpretations of the parties because: (1) it simply wanted to avoid resolving contentious disputes; or (2) the pressures to complete the study forced it to curtail its analysis; or (3) it had an extremely circumscribed and misguided view of its responsibilities. In any event, all three reasons for Liberty's failure to reach findings which impact ultimate conclusions regarding data accuracy are unacceptable. Given these circumstances, the Liberty data reconciliation process cannot plausibly be relied upon as a comprehensive, robust analysis of the integrity of Qwest's data.

4. Lack of Military Style Testing

38. To make matters worse, during the data reconciliation process, Liberty never subjected Qwest to military-style testing. In its Application, Qwest emphasizes that, although "Liberty issued one Exception Report and 14 Observation Reports concerning inconsistencies in the data...Liberty closed each report as resolved." Qwest Br. at 23. Thus, Qwest maintains that the closure of each exception and observation demonstrates beyond cavil that this Commission can and should rely on the Liberty data reconciliation report as proof that Qwest's data are accurate. Qwest's reliance on this slender reed is misplaced.

39. In finding that KPMG's third-party test of Bell Atlantic's OSS in New York constituted persuasive proof of the operational readiness of Bell Atlantic's OSS, the Commission pointed out that KPMG used military-style testing:[12]

> In performing these tests, KPMG adopted a military-style test philosophy, or a mindset of 'test until you pass.' Thus, when situations arose where testing revealed that a Bell Atlantic process, document, or system did not meet expectations, Bell Atlantic would generally implement a fix and KPMG would retest the process, document, or system until satisfied.

40. During its data reconciliation, Liberty opened and closed numerous observations that identified problems in the integrity and reliability of Qwest's data. However, Qwest cannot take solace in Liberty's closure of these reports. In any number of instances, the closure of an exception or observation *did not mean* that all deficiencies in Qwest's data had been resolved. Contrary to the approach taken by KPMG during its third-party test in New York, Liberty closed observations prematurely without verifying that Qwest successfully resolved the problems identified in the observation report.

41. Indeed, when Liberty discovered that human errors during the data monitoring and reporting process "could have a non-trivial effect on the reported performance results," Liberty apparently believed that its function as an auditor was restricted to determining whether Qwest's proposed new training programs and revised procedures *should be* effective in eliminating these problems. In fact, Liberty has conceded that, in some instances, when Qwest claimed that problems identified during the data reconciliation had been resolved through additional training, Liberty simply reviewed the training materials, but never verified the accuracy of Qwest's

[12] *New York 271 Order*, ¶ 98 (footnote omitted).

representations by observing the actual training or determining the efficacy of the training that was provided to Qwest's representatives.[13]

42. Similarly, during hearings, Liberty admitted that, before closing observations, it failed to examine Qwest's data generated after the purported fix to assess the efficacy of so-called corrective action Liberty had taken:[14]

> Q. (MS. TRIBBY CONTINUING) And, admittedly, in doing your data reconciliation now, you're looking at data that is potentially a year old; correct?
>
> A. Yes.
>
> * * *
>
> Q. The question was that you have not done an audit or a reconciliation of more recent months' data to verify that a fix has been put in play?
>
> A. That's correct.

43. Moreover, Liberty conceded that, when Qwest represented that a problem had been fixed, Liberty took Qwest at its word. *Id.* at 79-80. Thus, Liberty's closure of observations did not mean and could not mean that Qwest fully corrected the problems that served as a basis for an observation. Set forth below are examples of data integrity issues identified in observations that were closed prematurely.

44. **Observation 1028**. In Observation 1028, Liberty "reported that there was a significant error rate (about 15 percent) in the mean-time-to-repair (MTTR), or repair duration,

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[13] Transcript of Hearing, Case No. PU-314-97-193 (North Dakota Public Service Commission) ("North Dakota Hearing Transcript"), March 18, 2001 at 83-84 (Stright) (Liberty).

[14] North Dakota Hearing Transcript, at 82 (Stright) (Liberty).

used by Qwest in calculating its MR-6 measures for AT&T in Nebraska."[15] In analyzing the frequency of these types of errors, Liberty found that Qwest had an error rate of 6.5% in Oregon and an error rate of 6.5% for Arizona and Nebraska combined -- error rates that Liberty determined were unacceptably high. Qwest's errors generally were the result of "improper handling of, 'no access' time and improper ticket restoring and closing procedures." *Id.* at 14.

45. Notably, not only were these errors made by customer service technicians, but they were also made by the "scrubbers" -- the quality control personnel "responsible for verifying and reconciling ticket histories." *Id.* After Qwest furnished training materials that ostensibly were designed to improve the processing of trouble tickets, Liberty closed the observation, stating that it "is satisfied that Qwest has taken positive steps to reduce the level of errors found during the data reconciliation work...." *Id.*

46. Remarkably, as Liberty's final report and the following testimony elicited at hearing confirm, Liberty closed the observation even though it could not "substantiate" whether Qwest's new training programs would "work to reduce the error rate in MTTR":[16]

> Q. And on the top of page 6 you note that Liberty found that the errors in MTTR were generally due to improper handling of no access time and improper ticket restoring and closing procedures. Do you see that?
>
> A. Yes.
>
> Q. And I take it that Qwest gave you or talked to you about some new methods and procedures that they were going to put in place in order to fix that problem; is that correct?

[15] Liberty Observation 1028 dated December 26, 2001 and Disposition of Observation 1028. The various exceptions and observations discussed in this Declaration are included in Qwest's Application (Attachment 5, Appendix G, Volume 4). In addition, the exceptions are available at www.nrri.ohio-state.edu/oss/master/exceptions/exceptions.htm, and the observations are available at www.nrri.ohio-state.edu/oss/master/observations/observations.htm.

[16] North Dakota Hearing Transcript at 84-86 (Stright) (Liberty).

A. Yes.

Q. And in the last paragraph you state that while Liberty expects that the renewed focus on methods and procedures should work to reduce the error rate in MTTR, it cannot substantiate those effects at this time. Correct?

A. That is correct.

Q. And in fact you recommend that because you can't substantiate those effects, that might be appropriate for future monitoring; correct?

A. Yes.

Q. And if even though Liberty was not able to substantiate the M & R changes, Liberty did close this observation; correct?

A. Yes.

47. Because Liberty never verified whether Qwest's new training programs successfully resolved the error rates in trouble tickets, Liberty's closure of this observation was premature. Any such verification should have been relatively simple. After Qwest implemented its training programs, Liberty could have asked Qwest to submit a list of all trouble tickets as to which a "no access" condition was associated with the restoral time. Liberty then could have examined all or a sample of the interconnection trunk trouble tickets to assess whether Qwest continued to make errors in determining restoral and closure times for trouble reports. Because this testing never occurred, there is no assurance that these errors are not presently reflected in Qwest's performance data which are included in its Application.

48. Moreover, given Liberty's prior observations that the errors that Qwest made in calculating MTTR results were "significant," Liberty could have and should have verified whether Qwest's proposed corrective measures resolved these data problems.[17] Furthermore, in view of

[17] Liberty Observation 1028, dated December 26, 2001 at 1.

Liberty's representations regarding the elimination of other data problems purportedly attributable to the efficacy of remedial steps and Liberty's contrary findings,[18] Liberty should have tested the veracity of Qwest's representations regarding the purported effectiveness of its so-called remedial measures.

49. **Observation 1029**. In Observation 1029, Liberty found that Qwest was improperly excluding certain CLEC line-sharing orders. Significantly, Qwest conceded "that it was unable to report the majority of line-sharing orders in the months of July and going forward for certain CLECs." *Id.* at 15. However, before closing this observation, Liberty never validated the effectiveness of the permanent fix that Qwest implemented to resolve this problem. *Id.* at 15-16.

50. In this regard, in an attempt to eliminate this problem, Qwest implemented an interim "work-around solution" using a revised computer code.[19] After comparing the original July test data with the corrected July data file generated using the work-around solution, Liberty "confirm[ed] that the improperly excluded orders were included in the new July RSOR data set" and closed the observation in February 2002.[20]

51. However, Qwest implemented a permanent solution for this problem with the addition of a new detail field in PANS and announced that the results of the performance fix

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[18] For example, in Observation 1026, Liberty found that Qwest improperly included retail orders when calculating its wholesale results. In its response to this observation, Qwest stated that a code change implemented with "the December release corrected the results for all months in 2001." However, "Liberty found that for months before July 2001, Qwest's revised code could not correct the problem." Liberty Data Reconciliation Report at 13. Qwest's initial statement regarding the purported elimination of problems as a result of a code change and Liberty's contrary finding demonstrate that Liberty should have confirmed that Qwest's remedial measures actually corrected the problems that Liberty identified.

[19] Liberty Disposition Report, Observation 1029.

[20] Liberty Data Reconciliation Report at 12.

would be reflected in its reported results commencing with its December 2001 data.[21] Although Liberty had ample opportunity to review Qwest's performance results generated after implementation of the permanent fix, Liberty never evaluated the effectiveness of Qwest's permanent solution and relied instead on an assessment of Qwest's interim work-around solution.

52. **Observation 1030**. In Observation 1030, Liberty found that, "Qwest failed to report a number of Covad's Firm order Commitment (FOC records) because the state code was not automatically logged for those transactions."[22] In response to this observation, Qwest asserted that this problem "was caused by a code break in EDI 6.0 related to unbundled loop processing," and was ultimately resolved with more recent versions of EDI. Although Liberty closed this observation, Liberty admitted during hearings that it never examined Qwest's data that were generated using more recent EDI versions to determine if these problems had been resolved:[23]

> Q. I want to look back just at one more observation and that's 1030, which is discussed on pages 6 and 7. I'm looking particularly at the last paragraph discussing this observation on page 7. And your paragraph there states -- and this has to do with coding problems -- On the basis of Liberty's review of this matter, including Qwest's proposed solution to identifying records that did not contain a state code and Qwest's response to AT&T's concerns, Liberty considers this observation closed. Do you see that?
>
> A. Yes.
>
> Q. You're talking here about Qwest's proposed solution. Is that a solution that you were able to observe in practice after it had been implemented?

[21] North Dakota Hearing Transcript at 142.

[22] Liberty Data Reconciliation Report at 12.

[23] North Dakota Hearing Transcript at 87-88, 89-90.

> A. I need to go back and review this, if you could give me just a moment, because as soon as you read that, I questioned why the work "proposed" is in there.
>
> Q. Sure, Go ahead, Bob.
>
> A. Okay. I do recall some of the specifics now, is that this problem was corrected, but there was still a possibility that a record did not contain a state code and so Qwest initiated an additional process that they go through each month to identify those and that additional process is what we were referring to here. And in answer to your Question, no, we did not verify that particular aspect of this issue.
>
> * * *
>
> Q. You would not have reviewed any data or anything having to do with the new EDI interface which Qwest claims fixes this problem that was not put in place until January of this year; correct?
>
> A. We did not look at data from late last year or early this year, that's correct.

53. **Observation 1031**. Liberty found in Observation 1031 "that the Service Order Miss Code (SOMC) in the RSOR data for some orders was incorrect, leading to errors in performance measurement reporting." Liberty Data Reconciliation Report at 13. During the data reconciliation process, Liberty determined that, when Qwest missed a commitment due to a lack of facilities, it inappropriately attributed the miss to the CLEC. Qwest personnel apparently failed to properly record Qwest-caused facility delays in TIRKS, and if Qwest personnel recorded the delay in TIRKS, they failed to populate WFAC with the information.

54. In describing the basis for this observation, Liberty identified a kitchen sink variety of "anomalies regarding the information in WFAC, to SOMC, and how they are used in performance measure reporting."[24] For example, in its initial observation, Liberty found that: (1) Qwest issued jeopardy notices long after the due date; (2) when Qwest issued a jeopardy notice, it

[24] Liberty Observation 1031.

incorrectly excluded the affected order from its OP-3, OP-4 and OP-6 results; (3) the "Service Order Miss Codes ("SOMC") in Qwest's RSOR data were not supported by the underlying WFAC information"; and (4) Qwest failed to adhere to its own procedures when determining whether Qwest or the CLEC should be held accountable for the missed due date.

55. In a data request, Liberty asked Qwest to explain how Qwest could issue a jeopardy notice well after the committed due date and then exclude the affected orders from its performance results. In Observation 1031, Liberty noted that, "Qwest's response was inadequate." Tellingly, in response to a data request, Qwest stated that it could not even "find" the original due date for one order "even though the RSOR data supplied to Liberty by Qwest contained the due date." Liberty Observation 1031 at 3. The mere fact that Qwest could not "find" the original due date in its RSOR data speaks volumes about the stability and reliability of its performance monitoring and reporting processes. In a supplemental response to data requests, Qwest conceded that "human error" caused it to issue jeopardy notices after the due date and improperly attribute jeopardy conditions to the customer. *Id.*

56. In its formal response to Observation 1031, Qwest admitted that 6.12% of AT&T's "interconnection truck orders were miscoded as customer-caused misses." *See* Qwest Formal Response to Observation 1031. Noting that these problems did not impact Covad or WorldCom orders, Qwest asserted that these errors had "minimal impact." In its response, Qwest also stated that it "conducted an additional assessment of the underlying causes of these human error problems and the means by which they *should* be corrected."[25] In that connection, Qwest noted that it had instituted training programs designed to assure that employees properly populated TIRKS with facility delays that were caused by Qwest.

57. Importantly, Liberty prematurely closed this observation based upon Qwest's promise that training programs "should" resolve these problems and Qwest's unverified

[25] Liberty Data Reconciliation Report at 13 (emphasis added).

representation that the impact of these errors was minimal. Liberty Data Reconciliation Report at 15. Liberty never verified the effectiveness of Qwest's remedial steps by reviewing a list of all CLEC interconnection trunk orders with missed commitments attributed to the customer, examining WFAC to assess the appropriateness of a customer jeopardy, and examining TIRKS to determine whether there was a facility miss associated with the order.

58. **Observation 1032**. In Observation 1032, Liberty found that Qwest improperly included in its OP-4 performance results orders with longer than standard intervals. In response to this observation, Qwest admitted that, due to "human error," it failed to use the "L" code which would have identified such orders.[26] After Liberty determined that this error affected a lower percentage of orders than it initially thought and based upon an examination of the revised documentation that Qwest represented "should help to avoid this kind of error in the future," Liberty closed the observation.[27] However, Liberty apparently closed the observation without verifying through retesting whether the revised documentation actually eliminated these errors. Such verification could have consisted of a simple examination of Qwest's post-fix data to ascertain whether Qwest properly "L" coded orders.

59. **Observation 1033**. In Observation 1033, Liberty found that Qwest used an incorrect order application date/time when calculating installation intervals for AT&T's trunk ASRs. OP-4 measures the average installation interval that elapses between the application date and the completion date.[28] According to the PID, the application date is "[t]he date (and time) in which Qwest receives from the CLEC a complete and accurate local service request (LSR) or access service request (ASR) or retail order" subject to certain exceptions. *Id.* Thus, for example, under the PID, the application date for ASRs for designed services submitted after 3:00

[26] Liberty Observation 1032.

[27] Disposition Report for Observation 1032.

[28] *See, e.g.*, Qwest ROC 211 Working PID Version 5.0, (OP-4).

p.m. is the next business day. In Observation 1033, Liberty found that, even when ASRs were received after 3:00 p.m., Qwest did not use the next business day as the application date. In other instances, Liberty found "that Qwest used the wrong application date because of uncertainty as to whether or not the application was 'complete and accurate' as is required in the definition section of the PID."[29]

60. In its initial response to Observation 1033, Qwest conceded that it applied the wrong application dates due to "human error."[30] Qwest also stated that it would take a number of "steps to reduce these kinds of errors" by, *inter alia*, conducting additional training and "improv[ing] the quality control process by increasing the quantity of ASRs sampled in the quality review process from 20 to 30 ASRs per SDC per month." *Id.* Although Qwest attempted to characterize the impact of these errors as "minimal," Liberty stated that "Qwest committed human errors in a third of the LIS trunk orders for which the parties agreed on the denominator but not the numerator."[31]

61. Remarkably, after reviewing the documentation that Qwest used to train its personnel, Liberty closed Observation 1033 without further investigation.[32] Clearly, an examination of training materials and methods and procedures could only reveal what Qwest *should do* when processing orders. Significantly, Liberty's findings in Observation 1033 revealed that Qwest failed to follow prescribed procedures. Given these deficiencies in Qwest's

[29] Liberty Observation 1033 dated January 3, 2002.

[30] ROC Observation and Exception Formal Response to Observation 1033 dated January 11, 2002.

[31] Liberty Memorandum from Bob Stright to ROC TAG dated January 14, 2002.

[32] Liberty Data Reconciliation Report at 16.

performance, Liberty should have verified whether these problems were eliminated *after* Qwest implemented its training programs.[33]

62. To make matters worse, although Qwest stated in its response to this observation, that it implemented a quality review process that involved, *inter alia*, increasing the volumes of sampled ASRs, Liberty closed the observation even after Qwest *could not* produce a single document supporting its representation (*id.* at 90-91):

> Q. And it would be fair to say, wouldn't it, Mr. Stright, that at times Liberty has wanted to see written documentation to give it some assurance that a problem has been fixed and that documentation has not been available to Liberty, wouldn't it?
>
> A. There were cases where we asked for things and either we didn't get them or Qwest couldn't provide them, or there were cases where we asked for information and we felt that that was insufficient or not on target enough and so we asked for more.
>
> Q. But even where Liberty has been unable to get some of the written documentation that it has wanted to see, it has still closed some observations; wouldn't that be accurate?
>
> A. Yes.
>
> Q. In fact, looking at observation 1033 on page 9 of your Washington report, this is one case – – and I'm looking at the last half of paragraph 3 – – where Qwest said to Liberty, we've got a new quality review process that will help with this problem and Liberty wanted to see some documentation having to do with that quality review process and that documentation was not available to you; correct?
>
> A. That's correct.

[33] Although Qwest admitted that it made these errors, it did not restate its historical results because "[i]t is a Qwest policy not to alter closed records." North Dakota Hearing Transcript, March 18, 2002 at 86.

63. **Observation 1035**. In Observation 1035, Liberty reported that Qwest was improperly including cancelled orders in its performance results on the OP-3 and OP-4 measures. As a result of this error, Qwest overstated its performance by improperly counting cancelled orders as orders as to which the due date was met. This problem occurred because of poor programming practices. At the creation of an order, Qwest automatically and prospectively populated the completion date field on the order with the committed due date. Once the order was completed, Qwest's systems should have populated the *actual completion date* for the order in Qwest's system. However, Liberty found that, even after an order had been cancelled, Qwest's systems failed to populate the actual completion date field with a value indicating order cancellation.

64. In addressing AT&T's concern that Qwest's prepopulation of completion dates could also have resulted in *missed* appointments being counted as *met* commitments for data generated prior to May 2001, Liberty found, *inter alia*, that Qwest could not even "reconstruct the data" to verify whether its missed appointment results were infected with the same errors:[34]

> Specifically, if completion dates were automatically assigned by SOLAR and passed to RSOR prior to May 2001, it may be possible that completion dates for most commitments could be inaccurate if they were not changed from being equal to the due dates. Qwest was unable to reconstruct the data to validate whether non-cancelled orders had accurate completion dates. It appeared that there were no safeguards in place to ensure that accurate completion dates were entered into the system to override the one automatically assigned by SOLAR. To the extent that orders were closed manually, (as opposed to being auto-completed, such that the completion date would be automatically updated), it is possible that some orders did have completion dates that were not accurate.

65. Based upon Qwest's representation that it implemented a programming fix to correct this problem, Liberty closed the observation without verifying whether the programming

[34] Liberty Observation 1035.

solution actually resolved this problem. In fact, Liberty admitted that it closed the observation even though it could not verify whether there were *any* "safeguards in place to correct the problem:"[35]

> Q. Let's move on to observation 1035, which is discussed on pages 10 and 11. This has to do with whether Qwest is inappropriately including canceled orders in its measures. And you're discussing on page 11 Liberty's comments on an issue that AT&T has made. And as I read your report in that second to the past paragraph on page 11 discussing observation 1035, you are acknowledging that the concern raised by AT&T may exist and that there may not be safeguards in place to correct that problem. Is that accurate?
>
> A. That is correct.
>
> Q. And despite that Liberty has closed this observation 1035; correct?
>
> A. Yes.

66. **Observation 1036**. In Observation 1036, Liberty found that Qwest inappropriately omitted AT&T's LIS trunk re-termination orders from its OP-measure results. In its response to this observation, Qwest stated that, because only inward orders should be included in OP-measure results and because re-terminations do not involve inward activity, re-termination orders were properly excluded from OP-measure results. However, Qwest also conceded that, because of "human error," it improperly used a C40 code which "drove inconsistent results," with certain orders being excluded and included.[36]

67. In an effort to show that the problems identified in Observation 1036 had been remedied, Qwest stated that it retrained its Design Service Center employees regarding the proper

[35] North Dakota Hearing Transcript, March 18, 2002 at 86-87.

[36] Qwest ROC Observation and Exception Formal Response OBS 1036, dated March 7, 2002 at 23.

jeopardy code that should be used for switch conversions and planned to implement a programming fix. *Id.* at 3. Based upon a review of Qwest's training materials on jeopardy codes and an examination of the revised programming code, Liberty closed Observation 1036.[37] Importantly, Liberty never confirmed whether Qwest's training programs and revised code actually eliminated the problems identified in this observation. During hearings in North Dakota, Robert Stright, a Liberty principal who drafted the final report, testified that Qwest "fixed" the problems identified in Observation 1036, but admitted that Liberty made no effort to assess whether Qwest's more recent data reflected the same problems reflected in the observation:[38]

> A. For that particular matter we're looking in January through June, I believe, of last year.
>
> Q. So have you attempted to make a determination by looking at any recent data to see whether that problem is or is not reflected in Qwest's most recent months of reported data?
>
> A. No.

68. **Observation 1037**. Observation 1037 found that Qwest failed to record the correct stop time used in calculating the OP-13A measure on the timeliness of coordinated cutovers. Under the PID, Qwest was required to record the stop time as the date when the "physical work and Qwest testing were completed." However, Qwest erroneously recorded the stop time "as the time the CLEC called back to confirm that the order was completed."[39]

69. In its response to this observation, Qwest conceded that it used erroneous stop times for hot cuts and that this "error manifested itself in two ways": (1) Qwest's reported results

[37] *See* Liberty Disposition of Observation 1036.

[38] North Dakota Hearing Transcript, March 18, 2002 at 78.

[39] Liberty Observation 1037.

reflected missed commitments that were actually completed on time;[40] and (2) Qwest recorded the time when the CLEC called back to accept the loop, but then subtracted the delay time from the overall interval. Although Qwest's designation of the stop time was plainly incorrect, Qwest maintained that its overall reported interval was, nonetheless, accurate.[41]

70. In its Disposition Report, Liberty stated that, based upon its review of Qwest's data for July and August 2001, it found no evidence that Qwest was still using incorrect stop times. However, Liberty's finding is belied by Qwest's own admission -- in a response dated April 3, 2002 -- that its technicians continued to inappropriately record the stop time as the time the CLEC called back (but simply subtracted the delay time from the installation interval calculation). Qwest's recording of the stop time was plainly contrary to the PID. Significantly, the mere fact that Liberty failed to detect these purported "technical" errors in Qwest's June and July 2001 data -- errors that Qwest admitted still existed -- highlights the inherent deficiencies in Liberty's testing.

71. Based upon Qwest's representations "that it had updated its job aids and retrained its testers on the correct treatment of stop times as of April 5, 2002" Liberty closed the observation without verifying the effectiveness of Qwest's proposed fix.[42]

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[40] Qwest's errors "that result in its reported performance being worse than actual performance" should not be ignored. Department of Justice Evaluation, *Georgia/Louisiana 271* n. 115. As the Department of Justice correctly observed, "[i]n order to establish effective benchmarks that readily can be used to hold an incumbent to an appropriate level of wholesale performance, metrics must neither understate nor overstate actual performance." *Id.*

[41] ROC Observation and Exception Formal Response to Observation 1037, dated April 3, 2002 at 2.

[42] Liberty Data Reconciliation Report at 18. Additionally, Liberty failed to investigate whether these errors affected PIDS other than OP-13A.

5. **Failure to Issue Exceptions**

72. The Liberty data reconciliation process is also flawed because Liberty failed to issue an exception or observation for instances of Qwest's noncompliant conduct. In its report, Liberty concedes that, although "OP-3 required a comparison of the completion date to the original due date (in accordance with PID 3.0), Qwest did not report orders for which the CLEC changed that original due date." *Id.* at 7. Qwest's exclusion of such orders violated the plain language of the PID; however, Liberty failed to issue an exception or observation for this lapse in performance reporting.

73. In this regard, during the development of the OP-3 PID, the parties discussed the fact that, under the PID, the evaluation of Qwest's performance was to be based on its ability to meet the original due date. Noting that Qwest would be deemed to have failed the measure even if it met the supplemental due date requested by the CLEC, the developers of the PID stated that Qwest's performance should be measured against the supplemental, rather than the original, due date. Curiously, Qwest soundly rejected that approach. Noting that both retail and CLEC service representatives supplement orders and that OP-3 is a parity measure, Qwest insisted that its performance should be measured against the *original due date* even if it is supplemented by the CLEC. Although the developers of the PID believed that Qwest's approach was flawed, the CLECs and the ROC accepted Qwest's proposal.

74. However, during the data reconciliation process, Liberty found that, instead of measuring its performance against the original due date, Qwest unilaterally and without prior notice, excluded orders with supplemental due dates. In doing do, Qwest inexplicably and inappropriately classified such orders as missed commitments because of a "customer hold for payment."[43]

[43] Qwest Section 271 Arizona OSS Final Report, Workshop 5, Docket No. T-00000A-97-0238, December 13, 2001 at 354.

75. Performance measures serve no useful purpose if they are subject to unilateral manipulation or redefinition by the BOC. Once Qwest agreed to measure its performance against the agreed due date, it was required to adhere to the business rules governing the metric. Liberty admitted in its report that "Qwest was in violation of the precise language that had been contained with PID" when it unilaterally excluded orders from its performance results, however, it essentially glossed over this violation and failed to issue an exception.[44]

76. As the foregoing makes clear, although Liberty inappropriately and prematurely closed observations during the data reconciliation process, Liberty's own report reveals that Qwest's performance data monitoring and reporting processes are riddled with errors – errors that underscore the frivolity of Qwest's claims regarding the purported integrity of its data. Liberty found that "half of the performance measure-reporting problems that Liberty identified were processing or system-type matters."[45] The remainder "were associated with human errors ... that could have a non-trivial effect on the reported performance results." *Id.* at 8.

77. In attempting to prove that its systems and processes are reliable, Qwest emphasizes in its Application that, before distributing its monthly performance reports, its regulatory reporting group scrutinizes "draft reports for accuracy and corrects any apparent errors." Williams Decl. ¶ 7. Qwest states further that it "has a dedicated team of workers who routinely review the PIDs and Qwest's data gathering systems . . . to ensure that Qwest is reporting results in accordance with the PIDs." *Id.* Given the errors and deficiencies in Qwest's performance data that have been uncovered to date, these internal quality control procedures that Qwest touts in its Application have proven to be ineffective. Beyond that, Qwest's own

[44] In reporting on the specific data reconciliation results for AT&T for Utah and Minnesota, Liberty found that: with respect to its reconciliation of 28 orders Qwest's error rate was 11.1% on the OP-3 measure; Qwest's error rate was 15.5% on the reconciliation of orders on; OP-4; and the error rate was 66.7% on its reconciliation of orders under OP-15. Liberty Data Reconciliation Report at 21.

[45] Liberty Data Reconciliation Report at 8.

description of its quality assurance program reveals that these processes are, in large measure, manual in nature. If Qwest's processes were mechanized so that the results of operations (*i.e.* raw data) were extracted from its operations databases and processed through the PID reporting rules, Qwest's data gathering, reviews and verification steps would be far less labor-intensive and far less prone to error. In a report that Qwest prepared in January 2001 at the request of the ROC TAG, Qwest identified those portions of its PID reporting processes that were both manual and mechanized. That report reveals the significant extent to which Qwest relies upon manual procedures during the PID reporting process.[46] As the Liberty data reconciliation process revealed and as the KPMG ROC OSS test confirmed, Qwest's undue reliance on manual processing has generated a host of problems, not the least of which are errors in its performance results.

C. The KPMG Data Reconciliation Process Did Not Validate the Accuracy of Qwest's Data.

78. Equally unfounded is Qwest's attempt to rely upon the KPMG data reconciliation process as proof regarding the accuracy of its performance data. As explained in the AT&T OSS Declaration, the reliability of the KPMG test has been called into serious question since its findings were based, to some degree, on information obtained from CLECs that entered into secret agreements with Qwest. AT&T OSS Decl. ¶¶ 16-17. Because KPMG relied, in part, on information obtained from CLECs that received preferential treatment from Qwest, the findings of KPMG which are based upon such information cannot be considered trustworthy.

79. Moreover, KPMG's Final Report cannot reasonably be considered a comprehensive analysis of the completeness and reliability of Qwest's performance data. Indeed, for any number of test criteria KPMG was "not able to fully determine that a criteria was satisfied

[46] *See* Qwest January 22, 2001 Manual v. Mechanized PID Report (attached hereto as Attachment 1).

or not satisfied." KPMG Final Report at 12. KPMG conceded that it was unable to determine Qwest's performance on, *inter alia*:

- provisioning EELs and Dark Fiber
- jeopardy notice timeliness for Resale and UNE-P
- performance on OP-6A-Delayed Days
- performance on OP-15-Interval for Pending Orders
- handling of close out codes for DS1 and higher bit rate troubles
- documentation of change management process

80. Furthermore, when test criteria were governed by diagnostic PIDs, KPMG simply calculated performance results without reaching a "Satisfied or Not Satisfied" finding or determining competitive impact. KPMG Final Report at 12. Thus, for example, because "[a]ll but one of the evaluation criteria for the Order Flow Through evaluation were governed by Diagnostic PIDs," KPMG noted that "[t]he Diagnostic results of the Flow Through test should be examined closely in light of the number of problems encountered in the area of manually handled orders during the course of the test." *Id.* at 14-15.

81. Similarly, because eleven test criteria for Test 12 (which involved the pre-ordering and ordering domain) were based upon Diagnostic PIDS, KPMG was unable to make any determination as to whether Qwest had satisfied these test criteria. The evaluation criteria in Test 12 that were governed by diagnostic measures are as follows (*id.* at 24):

- Qwest systems provide timely pre-order error message responses via IMA GUI.
- Qwest systems provide timely pre-order error messages via IMA EDI.
- Qwest systems or representatives provide rejections in response to LSRs submitted via IMA GUI.

- Qwest systems or representatives provide rejections in response to LSRs submitted via IMA EDI.
- Qwest systems or representatives provide rejections in response to LSRs submitted via facsimile.
- Qwest adheres to the original confirmed Due Date provided as the Firm Order Confirmation (FOC).
- Qwest is able to account for LSRs received electronically.
- Qwest systems or representatives provide timely Work Completion Notifications in response to LSRs submitted via IMA GUI.
- Qwest systems or representatives provide timely Work Completion Notifications in response to LSRs submitted via IMA EDI.
- Qwest systems or representatives provide timely Billing Completion Notifications (BCNs) in response to LSRs submitted via IMA GUI.
- Qwest systems or representatives provide timely Billing Completion Notifications (BCNs) in response to LSRs submitted via IMA EDI.

82. Because KPMG was unable to render findings regarding Qwest's performance in a number of areas, the KPMG Report cannot reasonably be considered a comprehensive analysis of KPMG's performance data.

83. In describing the data reconciliation process conducted by KPMG during the third-party ROC OSS test, Qwest states the following[47]:

> In the third party ROC OSS test, KPMG reconciled Qwest's reported performance results for the Pseudo-CLEC with KPMG's own results under measurements designated for test scrutiny. Like Liberty, KPMG identified a few discrepancies between the data sets. Qwest addressed these discrepancies and, with one very minor exception, KPMG closed as 'resolved' every Observation and Exception report that arose from data reconciliation.

[47] Williams Decl. ¶ 54, n. 37.

84. However, KPMG's audit of Qwest's OSS does not support Qwest's assertion that its data are accurate and reliable. If anything, KPMG's report reveals that Qwest's performance monitoring and reporting processes are plagued with problems resulting from human error. These errors have manifested themselves in a variety of ways including: the improper exclusion of orders from and inclusion of orders in performance results; erroneous calculations of provisioning intervals; and the inappropriate assignment of due dates to the pseudo-CLEC that are longer than the standard interval. Because of these problems, KPMG issued scores of observations and exceptions. Significantly, KPMG uncovered problems regarding the integrity of Qwest's data after Liberty had, in almost all cases, closed as resolved its observations and exceptions based on 2001 data. Given that Liberty closed as resolved its observations and exceptions based on 2001 data and KPMG continued to find data problems based on its review of late 2001 and early 2002 data, this provides further evidence that Liberty was incorrect in closing out its observations and exceptions as resolved.

85. In examining Qwest's responses to 75 observations and exceptions, KPMG found that Qwest repeatedly cited human error as the source of these problems and retraining of its personnel as an appropriate remedial step. Because Qwest's responses were saturated with references to human error and the need for additional training, KPMG issued Observation 3086 on January 29, 2002, finding that it had discovered "a pattern in Qwest's Observation and Exception responses that refer to the need for additional training and/or training enhancements."[48]

86. Although Qwest responded to KPMG's concerns by promising to implement training programs for its personnel, KPMG expressed reservations about the adequacy of these remedial steps, stating that "as issues raised in 'new' Observations/Exceptions continue to point to additional training needs for the SDC and ISC, KPMG Consulting believes that the adequacy of Qwest's ISC and SDC training programs may be insufficient." *Id.* at 1. Moreover, KPMG

[48] KPMG Observation 3086 at 1.

found that any such deficiencies in Qwest's training programs could "impede a CLEC's ability to obtain consistent and effective assistance, thereby negatively impacting its ability to conduct business operations." *Id.* at 7.

87. Remarkably, although KPMG initially discovered these errors through transaction testing and calls placed to the Qwest help desk, KPMG failed to follow this same approach before closing this observation. KPMG simply reviewed Qwest documentation, interviewed Qwest employees and observed Qwest employees at the order processing centers and the CLEC help desk. KPMG's approach was sorely deficient.[49] It did not perform transaction retesting and did not make additional help desk calls. An examination of Qwest documentation could only reveal what Qwest *should* do when processing CLEC orders. Further, KPMG's interviews with and observations of employees cannot serve as a suitable substitute for actual transaction testing when employees presumably would not know that their performance is being evaluated. Because KPMG simply relied on a review of documentation, as well as interviews and observations, to verify whether the rate of human error fell to acceptable levels, it is hardly surprising that KPMG found that its initial concerns addressed in Observation 3086 were resolved.

88. In all events, despite Qwest's suggestion to the contrary, the closure of Observation 3086 did not constitute a finding that the errors in Qwest's handling of manually-processed orders had been resolved. KPMG's retesting of Exception 3120 --which occurred after the closure of Observation 3086 -- revealed that human error was the root cause for discrepancies identified in Qwest's calculation of provisioning intervals under PID OP-4.[50] In fact, KPMG discovered errors in over 15% of Qwest's manually-processed UNE-P, resale and line-sharing orders. These errors were made because Qwest assigned the wrong application date

[49] *See* KPMG Adequacy Report at 1 (admitting that KPMG was "satisfied that, if properly executed the revised training regime could operate to reduce the likelihood of error," and that "the testing performed was not designed to permit KPMG Consulting to conclude that the changes and improvements had been effective in actually reducing the errors.")

[50] KPMG Observation 3110 – Second Response dated May 28, 2002.

to manually-processed orders. This lapse in performance reporting is of great concern because the application date essentially "starts the clock" during the provisioning process. Because the application date is used to assign due dates for orders, the erroneous calculation of the application date can have far-reaching effect and taint performance results on OP-3 (Commitments Met); OP-4 (Installation Quality); and OP-6 (Delayed Days). Although KPMG ultimately closed Exception 3120, KPMG issued Observation 3110 as a result of these errors in provisioning calculations.

89. After Qwest submitted its first response to KPMG's finding, KPMG identified yet other discrepancies in Qwest's data and recommended that Observation 3110 remain open. In its second response to this observation, Qwest conceded that some errors that it made were typographical, but claimed that other orders were properly excluded from the data set.

90. On May 24, 2002, KPMG advised Qwest that either a "retest would be required to enable this observation to reach closure," or "that in lieu of a retest it could review the orders from the earlier PID retest that did not flow-through to try to get a larger sample to determine Qwest's performance on manually handled orders." *Id.* at 3. Qwest accepted the latter approach.

91. After reviewing all of the PID retest orders, KPMG found that 60 of 109 orders that failed to flow-through were "excluded because they contained system algorithm problems that were the basis for the retest of Exception 3120," and that approximately 15% of the manually-processed orders reviewed contained "human input errors that could result in a miscalculation of the PIDS." KPMG reaffirmed "that the only way to properly address this observation is to conduct a retest that focuses on orders that drop out for manual handing." *Id.* Because Qwest refused to be subjected to further retesting, KPMG closed Observation 3110 as unresolved.

92. Qwest's attempt to characterize Observation 3110 as "minor" borders on the frivolous. KPMG's finding of an error rate of approximately 15%, coupled with its refusal to

close the exception, demonstrates the paucity of Qwest's assertion that the findings in this observation are somehow inconsequential. Clearly, CLECs cannot compete effectively if high percentages of their LSRs are subject to manual processing and 15% of those manually processed LSRs are error prone.

93. As the KPMG Final Report also makes clear, because "[t]he ROC Steering Committee was sufficiently concerned about the ability of regulators to monitor Qwest's performance in the area of manual handling...the ROC Steering Committee directed KPMG Consulting to conduct an Adequacy Study of the PIDs related to manual order handling."[51] As discussed herein, KPMG ultimately found that the PIDs lacked sufficient measures to capture these errors during the manual processing of orders.

94. Because no retesting of Observation 3110 was conducted, KPMG stated that it "was unable to determine" whether Qwest satisfied: (1) Test 14-1-44 -- which was designed to evaluate whether Qwest's ordering and provisioning results were consistent with KPMG's results for Pseudo CLEC; and (2) Test 12-11-4 -- which examined whether Qwest's pre-order/ordering performance data were consistent with KPMG's data for the Pseudo CLEC. KPMG Report at 99, 205. Citing the closure of Observation 3110 as unresolved, KPMG also found that it was unable to render any finding as to whether Qwest satisfied Evaluation Criteria 12-8-2 -- which examined whether the "[p]rocedures for processing electronically submitted non-flow-through orders are defined, documented, and followed." KPMG Final Report at 149-150.

95. In light of KPMG's findings regarding the extent to which Qwest made errors during the manual processing of orders, as well as KPMG's inability to determine whether Qwest satisfied test criteria, there is no sound basis upon which Qwest can rationally conclude that the KPMG data reconciliation process validated the accuracy of its performance data.

[51] KPMG Final Report at 15-16 (§ 6.3.1.1).

96. Similarly, KPMG closed Exception 3055 as unresolved before it conducted (or could conduct) retesting of the problem it had uncovered, much less concluded that Qwest had resolved the problem satisfactorily. In this exception, KPMG found that Qwest incorrectly assigned disposition and cause ("D/C") codes for repairs on Resale POTS and UNE-P orders.[52] D/C codes are used to identify the nature and source of a trouble condition. KPMG initially found that Qwest incorrectly assigned D/C codes over 38% of the time. After Qwest claimed that it had taken the appropriate steps to correct these errors, KPMG conducted a retest and found that Qwest incorrectly applied the D/C codes in over 11% of the trouble reports. However, Qwest refused to agree to a retest.

97. In its final response to Exception 3055, KPMG stated that it "reaffirmed its response of 01/17/2002 and believes that the results of the retest, still constitute an unsatisfactory result." Relatedly, in Observation 1028 Liberty also found that Qwest incorrectly applied D/C codes to trouble reports.[53] And, as noted above, Liberty closed Observation 1028 even though it never substantiated the effectiveness of Qwest's purported corrective action.[54]

98. Standing alone, the errors captured in Exception 3055 demonstrate that Qwest's claims regarding the integrity of its data cannot be credited. Beyond that, these errors pose a competitive threat because they can have a direct impact on customer service. If Qwest incorrectly identifies the source of a customer's troubles, these types of errors can result in delays in repairs and customer dissatisfaction. Against this backdrop, the absurdity of Qwest's claim that the KPMG data reconciliation validated the accuracy of its data is self evident.

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[52] KPMG Exception 3055, dated September 27, 2001.

[53] *See* Liberty Reply to Qwest's Response to Observation 1028 dated December 10, 2001 at 1-2.

[54] Liberty Observation 1028 Disposition Report, dated March 1, 2002 at 1.

D. The CGE&Y PMA Did Not Validate the Accuracy of Qwest's Data.

99. In its Application, Qwest contends that the CGE&Y PMA examined "'all aspects of Qwest's performance measurement processes, procedures, business rules exclusions, calculation methods and a qualitative assessment of their performance measurement processes.'" Williams Decl. ¶ 44 (footnote omitted). Noting that CGE&Y's final report on the Arizona PMA dated December 21, 2001, found that "'Qwest's performance measure systems and processes...were substantially in compliance with the requirements of the Arizona PID,'" Qwest contends that the CGE&Y PMA bolsters its claim that its data are accurate and reliable. Williams Decl. ¶ 44. This argument is equally flawed.

100. The Arizona Corporation Commission retained CGE&Y to serve as the Test Administrator and Hewlett-Packard to serve as the Pseudo-CLEC during third party testing of Qwest's OSS. The Arizona Master Test Plan ("Arizona MTP") includes a test section on "Performance Measurement Evaluation [which] consisted of a Performance Measurement Audit ('PMA') and Performance Measurement Evaluations ('PME') performed during the Functionality and Capacity Tests."[55] The Arizona Corporate Commission also hired CGE&Y to conduct the PMA.

101. The CGE&Y PMA and PME served two entirely different functions. The CGE&Y PMA was designed to examine "the documentation, data collection processes, calculations and other processes Qwest applied in providing performance measurement information to the CLECs in the state of Arizona."[56] As part of that process, CGE&Y, using Qwest's adhoc data sets, was tasked with the responsibility of determining whether Qwest properly applied business rules governing the PIDS when calculating performance results.

[55] CGE&Y Final Report of the Qwest's OSS Test prepared for Arizona Corporation Commission, March 29, 2002 at 440.

[56] CGE&Y Performance Measurement Audit Final Report, Version 3.0, prepared for Arizona Corporation Commission, December 21, 2001 at 18.

Qwest's adhoc data sets are the raw data that Qwest uses to calculate its performance results. Importantly, during that process, CGE&Y assumed that Qwest's raw input data were accurate. Despite Qwest's contrary suggestion, the CGE&Y PMA was not designed to and did not verify the accuracy of Qwest's raw input data.

102. The Arizona OSS test contemplated that the accuracy of Qwest's input data would be evaluated during the Functionality and Capacity tests. According to Section 8.5.3 of the MTP, during Functionality and Capacity testing, CGE&Y was required to obtain data from Qwest and the Pseudo-CLEC:

> During Functionality Testing and Capacity Testing, Qwest will provide appropriate performance measure data and results. The Test Administrator will verify such data and incorporate the results into the Functionality Testing and Capacity Testing. The Test Administrator will acquire and/or develop data, calculate Functionality and Capacity test results, and validate results of Qwest, Pseudo-CLEC and CLEC analysis.

103. Section 7.3.4 of the TSD also required CGE&Y to "perform an independent calculation of" measures based upon Qwest's raw data and the test Pseudo-CLEC's data and report any discrepancies in these calculations:[57]

> During the Functionality Tests, Performance Measurement raw data for the Pseudo-CLEC test orders, trouble reports and other transactions, calculated z statistics and other calculations will be collected from Qwest for all those measurement with a "Yes" indication in the MTP Appendix C. <u>Using the raw data (before exclusions) from Qwest, the TA will perform an independent calculation of all measurements with a "Yes" indication in the MTP Appendix C and will also perform an independent calculation of the same measurements for the same orders using the Functionality Test Data provided by the Pseudo-CLEC</u>.
>
> The TA will compare Qwest's computed z statistics and other calculations to TA computed z statistics and other calculations

[57] Test Standards Documents, Section 7.3.4 (emphasis added).

> (from Qwest's provided raw data) and to TA computed z statistics (from Functionality Test Data collected by the Pseudo-CLEC). Discrepancies in the calculations will be evaluated, documented and reported by the TA.

104. Critically, CGE&Y failed to adhere to the requirements of the MTP and TSD because, *inter alia*, the data necessary to recalculate performance results were not provided by the Pseudo-CLEC. This is a fundamental defect in the CGE&Y test. Section 3.7.5.5 of the Functionality Test, Ordering Exit Criteria (b) required the Pseudo-CLEC to provide to the TA "the required data for each test script." Similarly, Section 5.2.5 of the System Capacity Test Exit Criteria (d) states that "[a]ll of the data associated with the System Capacity Test [must be] captured and retained by the Pseudo-CLEC." In its Final Report CGE&Y admitted that it deviated from the MTP and TSD requirements by failing to calculate results based upon data gathered from the Pseudo-CLEC. CGE&Y Final Report § 2.5.3 at 116.

105. AT&T and other CLECs contended that CGE&Y's failure to adhere to test criteria seriously compromised the test. At the request of the Staff, the testers prepared a PID Data Element Summary report which identified those data elements which were not independently collected by the Pseudo-CLEC.[58] CGE&Y stated that "Functionality Test data captured by the Pseudo-CLEC are insufficient to calculate the performance measurements as defined in the PID." DGE&Y Final Report at 16. According to CGE&Y, 16 data elements which were "required to calculate PID compliant measures" were not independently collected by the Pseudo-CLEC. *Id.* at 129. To fill this void in the analysis, CGE&Y substituted *Qwest's adhoc data* for that which should have been collected from the Pseudo-CLEC. Incredibly, in their joint PID Data Element Summary Report, CGE&Y and HP contended that "[c]alculating PID complaint measures using the Pseudo-CLEC data and Qwest's adhoc data for the missing data elements results in the independent calculation required by the TSD." Joint Report at 4. This argument is circular and nonsensical. The TSD clearly provided that the evaluation of the accuracy of Qwest's raw data

[58] CGE&Y Final Report at 128.

inputs should be based upon a comparison of Qwest's raw data against *Pseudo-CLEC* data. The notion that Qwest's raw data inputs could somehow be validated by calculating results based *upon those same raw data inputs* is absurd. Thus, the CGE&Y PMA failed to perform the necessary testing to determine whether Qwest's performance data are accurate.

106. In those instances when Pseudo CLEC data were available, CGE&Y compared the Pseudo-CLEC data against Qwest's adhoc data. Remarkably, however, whenever data reconciliation revealed any material discrepancies between the two data sets, CGE&Y "adjusted the Qwest adhoc data to reflect the performance observed by the Pseudo-CLEC ... [and] CGE&Y then used this 'corrected' adhoc data to calculate performance measurement results for the Pseudo-CLEC and included those results in Section 2.5.4."[59] CGE&Y's approach is demonstrably unsound.

107. CGE&Y's admissions that there were "*material discrepancies*" between the two data sets requiring the *correction* of Qwest's adhoc data confirm that Qwest's data are inaccurate. Significantly, although CGE&Y conceded that there were "*material discrepancies*" identified during the data reconciliation process, those discrepancies did not result in the issuance of an Incident Work Order ("IWO") to reflect that Qwest's reported performance results did not capture actual performance. This omission violates Section 7.3.4 of the TSD which requires the reporting of each discrepancy and the issuance of an IWO:

> The TA will compare Qwest's computed z statistics and other calculations to TA computed z statistics and other calculations (from Qwest provided raw data) and to TA computed z statistics from Functionality Test Data collected by the Pseudo CLEC). Discrepancies in the calculations will be evaluated, documented and reported by the TA.
>
> Problems discovered requiring work by Qwest, will be entered on Incident Work forms and forwarded to the TAG for subsequent prioritization and submittal to Qwest for repair."

[59] CGE&Y Final Report at 128.

108. Against this backdrop, the CGE&Y PMA does not demonstrate and cannot demonstrate that Qwest's performance data are accurate. The CGE&Y PMA was not designed to and did not verify the accuracy of Qwest's raw input data. Verification of the accuracy of Qwest's raw input data inputs should have been conducted as part of the OSS Functionality and Capacity Testing. Unfortunately, however, because the testers failed to comply with the requirements in the MTP and STD, the accuracy of Qwest's raw data inputs was never validated during that process.

E. <u>The Current PIDs Omit Important Measures</u>.

109. The current PIDs on which Qwest relies to support its Application are incomplete because they omit measures which are important in capturing Qwest's actual performance. As noted above, the ROC Steering Committee was sufficiently concerned about Qwest's performance that it directed KPMG to conduct a study on the adequacy of the performance measures to capture Qwest's actual performance in handling manually-processed orders. KPMG found that Qwest's current PIDs are insufficient because they fail to capture or explicitly identify the impact of Qwest's errors during the manual processing of orders. In its Manual Order Entry Performance Indicator Description Adequacy Study ("Adequacy Study"), KPMG recommended the addition of four new measures to assess Qwest's performance on manually-processed orders. These measures are: Service Order Accuracy; Functional Acknowledgements of Manually Submitted orders; Accuracy of LSR Rejection Notices; and Conformance of FOC Due Dates with the SIG. Because these measures are currently omitted from Qwest's performance measurement plans, important aspects of Qwest's performance in handling manually-processed orders are not currently being measured.

110. Although Qwest has stated a willingness to develop a service order accuracy measure and has proposed a metric, as the accompanying AT&T OSS Declaration explains, Qwest's proposed metric is flawed because it does not capture Qwest's performance when

inputting two codes commonly used by CLECs on LSRs (*i.e.* universal service order codes and field identifiers. In an effort to demonstrate that its performance on provisioning accuracy is somehow exemplary, Qwest relies on its own internal audit of service order accuracy rates for Resale and UNE-P and loop orders and its performance results on the New Installation Quality measure. However, Qwest's internal, self-serving service order accuracy results have never been audited by a third-party,[60] and Qwest's results are devoid of details regarding the methodology it used to calculate its results. For these reasons, Qwest's highly-partisan internal results should be accorded no weight.[61]

111. Qwest's contention that a measure of the percentage of troubles reported within 30 days can somehow serve as a suitable surrogate for a metric on service order accuracy is equally specious. Although data on troubles reported within 30 days of installation provide some information on installation quality, that measurement does not and cannot capture only those service failures that are attributable to provisioning accuracy. Conversely, the installation trouble

[60] Hearing Transcript, Docket Nos. UT-003022, UT-003040 (Washington Utilities and Transportation Commission, June 7, 2002 at 8352 (Viveros) (admitting that Qwest's "internal audits have not been audited or reviewed by any outside source").

[61] Even if a service order accuracy measure is ultimately adopted, there is no assurance that it will be included in its performance enforcement plans. *See* Washington Hearing Transcript at 8374 (Viveros) (admitting that it is not known whether Qwest would agree to the inclusion of a service order accuracy measure in its QPAP). Of course, if a service order measure is not included in its remedy plans, Qwest will have no incentive to improve its performance in this area.

report measure cannot accurately capture all service failures attributed to provisioning accuracy.[62] As a result, the measure is both overinclusive and underinclusive.

112. Furthermore, Qwest has not accepted KPMG's recommendation regarding the implementation of a measure on the accuracy of rejection notices. A BOC's failure to provide accurate and timely status notices impedes a CLEC's ability to provide quality customer service. If Qwest returns a rejection notice that is patently inaccurate, a CLEC must expend considerable time and effort to resolve such problems. Until the problem is resolved, the customer will not receive services and will undoubtedly attribute the delay to the CLEC. After receiving a rejection notice that is clearly erroneous, a CLEC cannot, as a practical matter, send a supplemental order until it determines the basis for the first erroneous rejection. Only after learning the root cause of the problem would the CLEC have any assurance that the supplemental order is correct and will pass through Qwest's gateway. However, Qwest has declined to propose a measure on the accuracy of LSR rejection notices, stating that any such discrepancies should be the subject of data reconciliation or audits.[63]

113. Citing the current absence in the PIDs of any measures on the timeliness and accuracy of functional acknowledgements for manually-processed orders, KPMG observed that "it is important that a CLEC receive positive acknowledgement from Qwest of the receipt of all orders so that there is no question as to whether or not Qwest is working on the order."[64] KPMG

[62] For example, if a customer orders Call waiting, but Caller ID is provisioned instead, a new order rather than a trouble report could be issued to address the problem. Although such a provisioning mistake could result in significant customer dissatisfaction, it would not be captured in a metric on troubles reported within 30 days of installation. *See also* Department of Justice Evaluation, *Georgia/Louisiana 271* at 23 (stating that "when BellSouth does not provision a feature because service representative leaves the item off a manually-processed service order, the CLEC must re-order the feature, not submit a request to fix a trouble. Therefore, the usefulness of the provisioning complaints measure as a diagnostic tool is limited because it does not reflect many ordering errors") (footnote omitted).

[63] *See* Qwest's Response to Adequacy Study, Qwest Exhibit LN-055-23.at 9.

[64] KPMG Adequacy Study at 3.

also correctly observed that, the overall provisioning cycle can be delayed "if the order is not being processed by Qwest, and neither party is aware of that fact." *Id.* However, Qwest has declined to propose a new PID on the timeliness of functional acknowledgements for manually-processed orders and claims that it is unaware of any problems "that have risen to a level that would support creating a new measurement."[65]

114. In its Adequacy Study, KPMG also recommended the development of a new measure of Conformance of FOC Due Dates with the Service Interval Guide. Noting that CLECs rely on the Service Interval Guide and "pre-order queries to plan their business activities, and to help establish the requested due date submitted in orders," KPMG found that "the relationship between the SIG/query intervals, and the actually committed-to interval implied by the FOC due date, is important so that a material divergence between the two does not exist for an extended period of time."[66] As explained in the accompanying AT&T OSS Declaration, Qwest's own performance data show that Qwest modifies the due dates more often for orders from CLECs than orders from its own retail customers. KPMG's proposed measure would assess whether CLECs are assigned the standard intervals to which they are entitled. However, Qwest has declined to propose such a measure.[67]

115. In all events, although Qwest touts the comprehensiveness of the PIDs, the sheer number of measures is meaningless unless they accurately capture the performance they are

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[65] Qwest's Response to KPMG Adequacy Study, Qwest Exhibit LN-055-23 at 8.

[66] KPMG Adequacy Study at 5.

[67] Other important metrics are omitted from the PIDs. For example, there are currently no measures on the completeness or accuracy of Daily Usage Feed ("DUF"). Although the BI-1 measurement tracks the time to provide usage records, there is no measurement of the completeness and accuracy of Qwest's DUF. The fact that Qwest failed KPMG's DUF test five times because of inaccurate and incomplete DUF records demonstrates the need to have a measurement in place once KPMG is no longer telling Qwest that its DUF files are incomplete and inaccurate.

intended to measure. The current PIDs are deficient because they exclude measures which are important to detecting discriminatory conduct.

F. Qwest's Provisioning Results are Misleading.

116. Qwest contends that its reported results show that it provisions CLEC orders on a non-discriminatory basis.[68] However, Qwest's provisioning results are misleading because they obscure the impact of Qwest's policy of rejecting CLEC orders for which there are no facilities available or current engineering jobs in place that can accommodate the order.

117. In this regard, in the Spring of 2001, Qwest announced that it had changed its policy with respect to its handling of CLEC UNE orders for which no facilities are available. Before that policy change, whenever a retail customer or CLEC submitted an order for which no facilities were available, Qwest held the order until facilities became available or until the CLEC or retail customer cancelled the order.

118. However, in the Spring of 2001, Qwest implemented a new policy. Under the new policy, Qwest can reject CLEC UNE orders for which no facilities are available after Qwest verifies that there are no current engineering jobs that can accommodate the order. In stark contrast, under the new policy, if a retail customer submits an order for which no facilities are available, the retail order can still be held indefinitely until facilities become available or the customer cancels the order.

119. This disparate treatment is troubling standing alone; however, it also has a profound impact on four metrics: OP-3 (Installation Commitments Met); OP-4 (Installation Interval); OP-6B (Delayed Days for Facility Reasons); and OP-15B (Interval for Pending Orders

[68] *See, e.g.*, Williams Decl. ¶ 20.

Delayed Past Due Date for Facility Reasons).[69] Since parity is the performance standard under all of these measures, the rejection of CLEC orders in these circumstances has a significant impact on performance results. Thus, for example, assume, for the sake of argument, that 10% of all orders (for both CLEC and retail orders) cannot be filled immediately due to a lack of facilities. If one half of the CLEC orders are rejected because of lack of facilities and none of the retail orders are rejected for the same reason but are eventually completed, the related OP-3 provisioning results for CLECs will appear to be 5% better (or more) than those for retail customers.

120. In this regard, OP-3 (Installation Commitments Met) measures the percentage of orders for which the scheduled due date is met. It is virtually certain that Qwest will miss the committed due date for all orders for which no facilities are available. Using the hypothetical described above, if 10% of all orders cannot be filled immediately due to a lack of facilities and if 5% of those orders cannot be filled with current engineering jobs or jobs within the 30 day window, then 5% of CLEC orders will be rejected over and above orders that are rejected for other reasons. Of course, under the new Qwest policy, retail orders are not rejected in these circumstances. To make matters worse, the CLEC orders are not rejected at random. The rejected CLEC orders are those which had been held for a given period of time. When 5% of the CLEC orders are rejected, Qwest's retail results on OP-3 (Installation Commitments Met) will appear to be 5% worse than CLEC results. If 10% of CLECs are rejected (which may be the case for DS-1 loops), Qwest's retail results for OP-3 will appear to be 10% worse than CLEC results.

121. OP-4 (Installation Interval) measures the average interval between the application date and completion date. Qwest's policy of rejecting CLEC orders when no facilities are available will have a more dramatic impact on OP-4 than OP-3. Because the only orders that are

[69] In some states (*e.g.* Colorado and Iowa) Qwest will take 30 days before rejecting the CLEC order. In other states (*e.g.* Idaho, Nebraska and North Dakota) Qwest does not wait 30 days before rejecting the order. The SGAT paragraphs that contain these provisions are Paragraph Nos. 9.1.2.1.3.2 and 9.2.2.16.

being rejected are those that would have had long installation intervals as they wait for facilities to become available, the exclusion of these orders from reported results will make it appear that Qwest's retail intervals are longer than those for CLECs. Using the same hypothetical above, if the average installation interval for 90% of all orders is three days and the average interval for 10% of held orders in 60 days, the exclusion of 50% of the CLEC held orders will skew the CLEC installation interval dramatically. Using that example, the average Qwest interval would be 8.7 days, while the average CLEC interval would be 6 days -- a difference of 31%. If twice as many CLEC orders are rejected due to lack of facilities, the difference between the Qwest average and the CLEC average would be about 50%. The current OP-4 difference between retail orders and CLEC orders in Colorado for DS1 loops and ISDN capable loops is running between 30% and 50%. The rejection of CLEC orders for lack of facilities could be the reason for this difference.

122. OP-6B (Delayed Days) measures the average number of business days that service is delayed beyond the due date for facility reasons that are attributable to Qwest. For this metric, the problems introduced by the rejection of CLEC held orders are more subtle. For example, assume that 5% of CLEC and retail orders can be filled with an engineering job, and that these orders are held for 30 days. Assume further that the average interval for the remaining held retail orders is 90 days. Because the analogous CLEC orders are rejected, all things being equal, the OP-6B results will show the CLEC with average delay days of 30 days, and Qwest retail orders with an average delay days of 60 days -- a 50% difference. If all CLEC orders that are delayed for facilities are cancelled, then no CLEC orders will be included in OP-6B. A quick review of the OP-6B results for Colorado reveals that there are very few data points for CLEC orders. OP-15 is similarly impacted.

123. PO-3 (Rejection Notice Interval) ostensibly measures "the timeliness with which Qwest notifies CLECs that electronic and manual LSRs were rejected." Significantly, it does not

appear that LSRs which are rejected for lack of facilities are being captured by this metric. Indeed, the description of PO-3 does not specifically reference the rejection of orders for lack of facilities. Relatedly, there was no spike in Qwest's reported results in the April/May 2001 timeframe when Qwest rejected a backlog of CLEC orders as a result of the new policy. In addition, the results of the PO-3 measure are reported in hours and minutes for IMA and GUI interfaces. The rejections for held orders would be days and weeks. Qwest's reported results in the various states for PO-3 do not reflect rejections that occurred days or weeks after the application date.

124. Using the same hypothetical, assume that 5% of the orders that are being held for no facilities are rejected after 20 days, and that normal rejections are returned within four hours. If this phenomenon were captured in PO-3, Qwest's results would change dramatically. Typically Qwest's reported results for manual orders show a rejection rate of approximately 4%, with an average rejection interval of about 3 hours. If 5% of the orders that were rejected after 20 days are added to this metric, the results for PO-4 would average 268 hours instead of 3 hours. This shows the substantial impact this type of rejection would have on PO-3 and demonstrates that Qwest is not including this type of rejection in its reported results. Qwest must include orders that are rejected for no facilities in PO-3 metric before this metric can be deemed accurate.

125. PO-4 (LSRs Rejected) purportedly measures "the extent LSRs are rejected as a percentage of all LSRs. As demonstrated above and based upon an examination of the PID, it does not appear that Qwest is not counting rejections due to a lack of facilities in this metric. If 5% of all orders are rejected for lack of facilities, then the average rejections would increase by that percent in every category. This would cause a substantial increase in the percentage of manual rejects (as to which the current rejection rate is approximately 4%) and a less dramatic increase for orders that are electronically rejected (as to which the rejection rate is currently

around 25%). In any event, Qwest must include this type of rejection in PO-4 before the metric and results can be deemed accurate.

126. Although the numbers used above are hypothetical, these examples show that Qwest's policy has a substantial impact on its reported results. Moreover, the foregoing illustrates that Qwest's claims regarding its exemplary provisioning performance are highly suspect, and that its reported results cannot be trusted.[70]

III. QWEST'S COMMERCIAL DATA SHOW THAT IT HAS NOT MET ITS SECTION 271 OBLIGATIONS.

127. Qwest asserts that the KPMG OSS test, in combination with its commercial performance data, show that it has fully satisfied its Section 271 obligations. Qwest is wrong on both counts.

128. As a preliminary matter and as discussed in the AT&T OSS Declaration, the KPMG OSS test was never intended to serve as a comprehensive analysis of whether Qwest is in compliance with its OSS obligations under Section 271. Indeed, the KPMG Report states explicitly that its evaluation does not constitute an analysis regarding Qwest's compliance with its statutory obligation of nondiscriminatory access.

129. Even leaving aside the stated purpose and scope of its testing, the KPMG Report does not support Qwest's claim that it is in compliance with Section 271. The KPMG Report references any number of performance failures which illustrate that Qwest has not satisfied its parity obligation. Moreover, the KPMG Report, in combination with Qwest's own inadequate commercial performance data, show that it is not satisfying its statutory obligations. For example, with respect to any number of measures for which data are provided, Qwest's own data show that

[70] Similar issues have been investigated with respect to interconnection trunks when Qwest has cancelled orders held for over eight months and failed to include the data for these orders in the metrics. Liberty acknowledged that this was in fact occurring during data reconciliation.

its performance for CLECs was substantially worse than its performance for its own retail operations. As to other measures, Qwest missed the benchmark standards that have been established. What is even more troubling about Qwest's performance is that it occurred during periods of relatively modest CLEC order activity that should have posed no difficulties for its systems. Set forth below are a few examples of Qwest's performance failures.

A. Colorado

1. Ordering

130. Qwest's own data show that it is not satisfying its obligation to perform ordering processes on a commercially reasonable basis. As explained more fully in the AT&T OSS Declaration, in order for CLECs to compete effectively in the marketplace, CLEC orders must flow-through Qwest's systems, without rejection and without falling out for manual processing, to the same extent as Qwest's retail orders. High rejection rates and excessive-reliance on manual processing create obstacles to competition because of the attendant risks of error and delay. Qwest's rejection rates are unacceptably high, and its flow-through rates at current levels are wholly inadequate to give CLECs a meaningful opportunity to compete with Qwest's retail operations.

131. **Rejection Rates**. Qwest's rejection rates (which are conspicuously absent from Qwest's Application) are far too high.[71] As explained in the AT&T OSS Declaration, in April 2002, approximately 31% of LSRs received over Qwest's IMA-GUI and 23% of LSRs received over the IMA-EDI were rejected electronically by Qwest's systems. These percentages do not include the LSRs that were manually rejected. When both categories of orders are combined, the data show that approximately one-third of all electronically-submitted LSRs were rejected in April

[71] These rates are based upon Qwest's region-wide data.

2002. Qwest's historical results reveal that the percentages of orders rejected electronically have ranged from 22 to 31%, depending upon the interface.

132. The high incidence of rejection rates reflected in Qwest's commercial data is fully consistent with KPMG's findings during the OSS test. During its third-party tests, KPMG found that: 25.3% of LSRs submitted *via* the IMA-GUI interface were rejected in the Eastern Region; 25% of LSRs submitted *via* IMA GUI interface were rejected in the Central Region; and 20.2% of the LSRs submitted via this same interface were rejected in the Western Region.[72]

133. KPMG also found that the rejection rates for LSRs submitted via the IMA EDI interface were even higher. In the Eastern Region, 33% of the LSRs submitted over IMA-EDI were rejected; while 40.5% of the LSRs submitted over this interface were rejected in the Central Region. Furthermore, KPMG found that over one-third of all LSRs submitted over IMA-EDI were rejected in the Western Region.

134. These high rates of rejection pose considerable problems. A rejection notice requires the CLEC to resubmit a new or supplemental order which lengthens the provisioning process and increases the CLECs' costs. And, as explained in more detail below, Qwest's low total flow through rates may well cause these orders to fall out for manual processing – causing yet additional delay and risks of error.

135. **Flow-Through**. In its Application, Qwest asserts that it "has met — or came close to meeting — the overwhelming majority of benchmarks for electronic flow-through…." Notarianni/Doherty Decl. ¶ 308. However, in describing its performance in this area, Qwest focuses *only* upon its performance under PO-2B which measures its flow-through rates for all LSRs that are designed to flow-through and is silent regarding its total flow-through rates for all electronically-submitted LSRs that are measured under PO-2A. *See* Notarianni/Doherty Decl.

[72] KPMG Final Report at 81.

¶¶ 308-312. Qwest does so for good reason. Qwest's total flow-through rates for CLEC orders are erratic and woefully inadequate.

136. As explained in the AT&T OSS declaration, Qwest's total flow-through rates for Unbundled Loop LSRs received *via* IMA GUI have ranged from a low of 22.79% in May 2001 to a high of 52.08% in January 2002. To make matter worse, the flow through rates for Unbundled Loop (Aggregate) LSRs have deteriorated since January 2002. In February 2002, Qwest's flow-through rate for these orders was 50.90%; and, in March 2002, the flow through rate for these orders declined to 44.10%. *See* Qwest Colorado Performance Results (ROC 271 PID 4.1) at 44. CLECs cannot guarantee customer satisfaction or plan business needs or compete effectively in the marketplace if Qwest subjects them to such highly fluctuating and inadequate rates.

137. Furthermore, as explained in the AT&T OSS Declaration, Qwest's regional commercial data show that, more than 30% of LNP orders, 25% of resale orders, 40% of unbundled loop orders and 40% of UNE-P-POTS orders fell out for manual processing in April 2002. These total flow-through rates standing alone and/or in combination with Qwest's high rejection rates are commercially unreasonable.

138. Qwest's Application does not discuss these specific performance results. Instead, Qwest emphasizes its performance under PO-2B which measures the percentage of all LSRs that are eligible to flow through and actually flow through without manual processing. This measure records only how many of the order types that Qwest has unilaterally determined should flow through actually do flow through. However, even its performance in this area has been marked by failure. As Qwest concedes, during three of the past four months of reported data, it missed the 90% benchmark under PO-2 B for LNP orders submitted *via* the GUI interface. Williams Decl. ¶ 106. In rationalizing its poor performance, Qwest implies that these misses are attributable to CLEC errors. *Id.* ¶¶ 106, 114. Any such argument is plainly contrary to the evidence.

139. The PO-2 PID already allows Qwest to exclude orders with CLEC-caused errors. In February 2002, Qwest submitted a proposal to the ROC TAG to add non-fatal rejects to the list of orders that can properly be excluded from PO-2 results. In the PID notes for its April 2002 results, Qwest stated that, for purposes of PO-2 reporting, it "[i]mplemented programming to identify and exclude non-fatal rejects from results as part of PID exclusion for rejected LSRs for Mar[ch] 02 forward," and that "[p]reviously, only fatal rejections had been excluded." This change to the PO-2 measure to exclude "LSRs containing CLEC caused fatal errors" was approved during a TAG meeting in April. As consequence, Qwest's March and April 2002 results already exclude CLEC-caused errors. Thus, Qwest's rationalization -- that CLEC error is somehow responsible for its performance misses -- is nonsensical. The reality is that Qwest still failed to meet the 90% benchmark even when CLEC-caused errors were removed from its results.

140. **Jeopardy Notices**. The Commission has repeatedly stressed the "critical" importance of having incumbent LECs provide timely jeopardy notices to CLECs so that they can inform their customers when new services will not be installed on the scheduled due date and promptly reschedule the time for service installation. *BellSouth South Carolina 271 Order*, ¶ 139; *Second BellSouth Louisiana Order* ¶ 131. The PO-8 measure "[e]valuates the timeliness of jeopardy notifications, focusing on how far in advance of original due dates jeopardy notifications are provided to CLECs (regardless of whether the due date was actually missed)."[73] The performance standard for this measure is parity with retail.

141. Qwest's own performance data show that it has not provided jeopardy notices at parity with its retail operations. For example, in March 2002, the average jeopardy notice interval for CLEC Non-Designed Services orders was only 2.78 days, while the comparable interval for retail orders was twice as long (6.26 days). In April 2002, the jeopardy notice interval for CLEC Non-Designed Services orders was 2.70 days, while the jeopardy notice interval for retail orders

[73] Qwest Service Performance Indicator Definitions, (PID) Version 6.0.

was 5.84 days. Qwest Colorado Performance Results (ROC 271 PID 4.1) at 60. Qwest concedes these performance misses, but advances a number of excuses for failing to meet the parity standard.

142. For example, Qwest claims that it missed the performance jeopardy notice timeliness parity standard because of purported differences in the lead time required to complete Non-Designed Services for Retail and CLEC orders. Notarianni/Doherty Decl. ¶ 263; Williams Decl. ¶ 130. Noting that the service order interval for both retail and wholesale orders is three days, Qwest contends that CLEC orders for Non-Designed Services during the reporting period were submitted, on average, 3.3 to 3.6 days before the due date, thereby "requiring Qwest to provision the order almost immediately after receiving it and leaving little time" for the timely issuance of a jeopardy notice. Williams Decl. ¶ 131.

143. In stark contrast, Qwest maintains that, during the same reporting period, retail orders were submitted, on average, 6.9 to 7.8 days before the due date because the end users generally requested a later completion date. Based upon these purported differences in lead times between retail and wholesale orders, Qwest asserts that "when compared with the date Qwest received the orders, Qwest issued wholesale jeopardy notices more quickly than Retail," and that its wholesale jeopardy intervals were less than retail "[o]nly because wholesale orders were submitted with less lead times." Notarianni/Doherty Decl. ¶ 264. Qwest's various excuses cannot withstand scrutiny.

144. Qwest's ultimate conclusion is fundamentally infirm because it is, *inter alia*, based upon an erroneous premise. Qwest's blanket assertion that the service order interval for retail and wholesale Non-Designed orders is exactly three days is incorrect. In Colorado, the service order interval is *two* days if facilities are available and no dispatch is required.[74] With respect to

[74] Qwest Communications Inc. Service Interval Guide for Resale and Interconnection Service, May 13, 2002 at 35.

dispatch orders, the "appointment scheduler is utilized, which assigns intervals to both wholesale and retail orders on a first-come, first-served basis.[75] These dispatch appointments will generally be longer than three days. Thus, Qwest is wrong when it claims that a three-day standard interval applies to all retail and wholesale, Non-Designed orders.

145. Moreover, Qwest's assertion that CLECs submit orders with insufficient lead time for the timely issuance of a jeopardy notice is baseless. CLEC orders are being submitted to Qwest in ample time for provisioning within the standard interval. The reality is that Qwest frequently assigns due dates requested by CLECs without checking its systems to determine whether facilities are available on those dates. Because it fails to verify that facilities are available, Qwest often changes the due date and then issues jeopardy notices. Furthermore, Qwest has presented no empirical evidence showing that its retail orders are placed 6.9 to 7.8 days before the due date because end users purportedly request the provisioning of their orders at a later date.

146. Putting to one side these deficiencies in its analysis, Qwest's arguments are also meritless because they constitute an attack on the PIDs that Qwest adopted after a lengthy collaborative process that it touts in its Application. At bottom, Qwest argues that the jeopardy notice interval measure for Non-Designed Services is flawed because it fails to account for the alleged differences in lead times in provisioning Non-Designed retail and wholesale orders. However, Qwest participated in the development of the PIDs, agreed that a parity standard was appropriate for this measure, and blessed the retail analog used in calculating its performance. Having agreed to the jeopardy notice PID, Qwest cannot and should not be permitted to retreat from its own performance results that are based upon the PIDs.

147. Qwest concedes that, in Colorado, it did not meet the parity standard for jeopardy notice timeliness for Unbundled Loops in January, March and April. Notarianni/Doherty Decl. ¶ 267. In an effort to diminish the significance of these chronic performance failures, Qwest

[75] Qwest's Response to KPMG Adequacy Study at 20 (Qwest Exhibit No. LN-055-23).

contends that its jeopardy notice timeliness results should be ignored since, *inter alia*, it could have met the parity standard if it had issued 16 additional timely jeopardy notices. *Id.* ¶ 270. The simple answer to Qwest's argument is that Qwest's observation (that it would have met the parity standard by issuing 16 more jeopardy notices) is nothing more than idle speculation that should be accorded no weight.

148. In a further effort to minimize the significance of its performance misses on jeopardy notice timeliness, Qwest resorts to promises. Qwest states that enhanced system processes that will be implemented in June 2002, should improve its jeopardy notice timeliness performance. Williams Decl. ¶ 138. However, these statements are nothing more than self-serving paper promises which have no probative value in the context of this proceeding.

149. **Firm Order Confirmation.** Qwest contends that, with minor exceptions, it satisfied all of the benchmark standards for FOC timeliness in Colorado and all other states that are covered in its Application. Williams Decl. ¶ 123. However, Qwest's performance is hardly cause for celebration. When Qwest's performance is viewed in the context of the number of due date changes it makes per order under the PO-15 PID, its FOC timeliness performance cannot reasonably be viewed as exemplary. The reason why Qwest's FOC timeliness rates appear to be satisfactory is because Qwest frequently fails to verify that facilities are available after receiving an order and simply issues a FOC reflecting whatever due date the CLEC requested. As explained in the AT&T OSS Declaration, once Qwest finally reviews the LSR and determines the due date it can actually meet, it changes the due date. Qwest's regional data show that Qwest changes the due dates for approximately 7% to 12% of CLEC orders per month. The CLEC rate of changes in due dates is two to three times higher than that for similarly situated retail customers and is worse by a statistically significant margin. Thus, Qwest's statements in its Application touting its FOC timeliness rates simply highlight the fact that Qwest views its performance in terms of

timeliness, no matter how abysmal its quality.[76] And, its own commercial data show, that Qwest denies nondiscriminatory access to due dates.

2. **Provisioning**

150. **Installation Intervals.** In order to show parity for provisioning, Qwest must demonstrate that it is provisioning CLEC orders within the same amount of time that it provisions the same or comparable services for its own retail customers. Accordingly, the Commission has found that data on average installation interval are "fundamental to any showing of nondiscriminatory performance in support of a Section 271 application.[77] Qwest's own data show that it is not provisioning CLEC orders at parity.

151. In March and April 2002, the installation intervals for CLEC UNE-P (Centrex) orders were approximately three times longer than those for retail customers. In March 2002, the installation interval for UNE-P Centrex nondispatch orders was 4.62 days, while the interval for retail customers was 1.25 days. Similarly, in April, 2002, the installation interval for retail customers was 1.38 days, while the interval for UNE-P (Centrex) nondispatch orders was over 3 days longer (4.5 days).[78]

152. Qwest's own performance data show that it does not provision EELs in a nondiscriminatory manner. As Qwest concedes, in Colorado -- the only state with reported data for EELs -- it consistently failed to meet the 90% benchmark for installation commitments met for this product category from January through April 2002. Qwest Br. at 51. Relatedly, during

[76] *See* New York PSC Order Adopting Inter-Carrier Services Quality Guidelines, No. 97-C-0139, Appendix at 3 (February 16, 1999) (noting that a BOC could obscure its actual firm order timeliness results by "send[ing] useless confirmations to the parties in order to have good performance on this metric, and then send a meaningful one later, which would be excluded" from the FOC timeliness measure).

[77] *Michigan 271 Order* ¶¶ 164-171, 185, 212.

[78] Qwest Colorado Performance Results (ROC 271 PID 4.1) at 102.

its third party, test KPMG found that Qwest did not satisfy Evaluation Criteria 14-1-14 which assesses whether "Qwest provisions EEL Circuits by adhering to documented method and procedures tasks." KPMG Report at 191-192.[79] KPMG found that Qwest failed to meet the 95% benchmark standard established during the test for complying with methods and procedure when installing EELs. In one test, Qwest satisfied only 87% of the tasks in compliance with methods and procedures, and, in a second test, Qwest's performance deteriorated to 60%. *See* Disposition Report on KPMG Exception 3104. Therefore, there is absolutely no evidence in this record, be it commercial or test data, to show that Qwest can timely provision EELs as required by law. These lapses in performance could well result in lengthy provisioning and installation problems.

153. Mindful of its performance failures in this area, Qwest alleges that its training programs and improved DS1 EEL provisioning documentation somehow assure "that CLECs will have nondiscriminatory access to EELs should they begin to order them in greater volumes." Qwest Br. at 52. Qwest's analysis is demonstrably unsound. Clearly, the existence of training programs and policies and procedures are wholly insufficient to *demonstrate* that Qwest provisions EELs in a nondiscriminatory manner. As this Commission has repeatedly held, commercial data have the most probative value in demonstrating checklist compliance; and Qwest's own commercial data show that it has failed to satisfy the benchmark standard for commitments met in its provisioning of EELs.

154. **Delayed Days**. The PIDS include the OP-6A measure which measures delayed days for non-facility reasons. In March and April 2002, Qwest failed the parity standard for this measure for unbundled analog loops.[80] In March 2002, Qwest's retail orders experienced 2.82 delay days, while CLEC unbundled analog loop orders experienced 5.82 delay days, resulting in a

[79] KPMG Disposition Report, Exception 3104 dated February 26, 2002.

[80] *See* Campbell Loops Decl. ¶ 105; Colorado Performance Results, January – April 2002 (OP-6A) at 13, Qwest Appendix D, Attachment 5.

z-score of 2.23. In April 2002, the delay days experienced by unbundled analog loop orders were approximately twice as long as those experienced by retail orders. During that month, Qwest's retail orders experienced 3.43 average delay days, while CLEC unbundled analog loop orders experienced 6.82 delay days.[81]

3. Maintenance and Repair

155. The Commission has repeatedly stated that a BOC "must provide competitors with equivalent access to all repair and maintenance OSS functions that [the BOC] provides to itself." *BellSouth Second Louisiana Order*, ¶ 145. Qwest claims that its commercial performance data show that it has satisfied its statutory obligations in this area. Qwest's assertions cannot withstand analysis.

156. **Repair Repeat Report Rates**. Qwest has not satisfied the parity standard during the maintenance and repair process. Qwest's own data show that the repeat trouble report rates for CLECs are worse than those for retail customers. In December 2001, as well as January, February, and April 2002, the repair repeat report rates for CLEC UNE-P (Centrex) dispatch orders (within MSAs) were higher than those for retail customers.[82] Furthermore, from January through April 2002, the repair repeat trouble report rates for nondispatch CLEC business orders were consistently worse than the rates for Qwest's customers.[83] Additionally, from October 2001

[81] Colorado Performance Results, January – April 2002. (OP-6A) at 13, Qwest Appendix D, Attachment 5.

[82] For example, in April 2002, the repeat trouble rates for UNE-P Centrex dispatch orders was 13.83%, while the rate for retail customers was 6.45%. In February 2002, the repeat trouble rate for CLEC UNE-P Centrex dispatch orders was 19.34%, while the rate for retail orders was 7.5%. Qwest Colorado Performance Results (ROC 271 PID 4.1) at 262.

[83] For example, in February 2002, the repair repeat trouble report rate for nondispatch CLEC business orders was 21.05%, while the repair repeat trouble report for retail orders was only 15.5%. In March 2002, the repair repeat trouble report rate for CLEC nondispatch business orders increased to 25%, while the rate for retail customers was only 16.33%. In April 2002, the repair repeat trouble report rate for nondispatch CLEC business orders was 23.5%, while the rate for retail orders was 13.72%.